

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

**State-Level Complaint 2023:537
Adams-Arapahoe 28J**

DECISION

INTRODUCTION

On April 19, 2023, a third-party individual (“Complainant”), on behalf of parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”),¹ filed a state-level complaint (“Complaint”) against Adams Arapahoe-28J, Aurora Public Schools (“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 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from April 19, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review and revise an IEP, from April of 2022 to present, that was tailored to meet Student’s individualized needs, specifically by:
 - a. Failing to consider Student’s communication needs, including opportunities for direct communication with peers and professional personnel and instruction in

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.

Student's language and communication mode, in violation of 34 C.F.R. § 300.324(a)(2)(iv); and

- b. Failing to consider the availability of a deaf/hard of hearing peer group of Student's communication mode or language, in violation of ECEA Rule 4.03(6)(a)(iii).
2. Failed to educate Student in the Least Restrictive Environment ("LRE") from April of 2022 to present, by failing to offer a full continuum of alternative placements and failing, as necessary, to make arrangements with public or private institutions, in violation of 34 C.F.R. §§ 300.114, 300.115 and 300.118.
3. Amended Student's IEP after January 17, 2023 without the agreement of Parents and outside of an IEP team meeting, in violation of 34 C.F.R. § 300.324(a)(6).

FINDINGS OF FACT

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

A. Background

1. Student is nine years old and attends third grade at a District elementary school ("School"). *Exhibit A*, p. 63. Student and her family currently reside within the boundaries of District. *Id.*
2. Student is identified as a child with a hearing impairment, including deafness and a speech or language impairment. *Id.* Student has profound hearing loss in both ears and communicates primarily through sign language. *Id.* at pp. 67 and 70.
3. Student is friendly and loves being with people, especially family. *Interview with Complainant and Student's classroom teacher ("Teacher")*. She is motivated to learn. *Id.* She spends lots of time asking her educational interpreter ("Interpreter") questions, including about the conversations other students are having. *Interview with Teacher*.
4. Student also has a significant language delay. *Exhibit A*, p. 70. As a result of her hearing loss, Student "misses incidental learning of language at home and at the school setting which causes gaps in all of her academic areas" including reading, writing and math. *Id.* She is easily overwhelmed by academics and changes in routines and frequently cries in class. *Interview with Teacher*. Student expresses sadness that her peers do not sign and sometimes gives up on conversations "since she becomes tired trying to communicate." *Exhibit A*, p. 68.

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

B. Sign Language

5. American Sign Language (“ASL”) is a fully developed language distinct from English. *Interview with Interpreter*. It is a conceptual language with a unique word order and distinct grammar and sentence structure as compared to English. *Id.* ASL’s unique structure paints a picture. *Interview with CDE Content Specialist*. For instance, instead of saying “the boy climbed the tree,” in ASL the speaker would begin by setting up the tree. *Id.*
6. Signed Exact English (“SEE”) uses some signs from ASL. *Interview with Interpreter*. However, it exactly follows English word order and there is a sign for every word, including prefixes and suffixes. *Id.* As a result, it adds many additional signs that are not part of ASL. *Id.*
7. Conceptually Accurate Signed English (“CASE”) falls in between ASL and SEE. *Id.* CASE uses signs from ASL while generally following English word order. *Id.* This makes simultaneous translation easier. *Interview with CDE Content Specialist*. However, without that set up and the unique order of ASL, the signs for “boy” “climbed” “tree” could have other meanings for a Deaf ASL user. *Id.* Individuals with some hearing, perhaps aided by assistive technology or medical devices like cochlear implants, can use that auditory stimuli as context to clarify the meaning of the signs. *Id.*
8. Students who are Deaf or hard of hearing (“DHH”) can have varying primary languages and varying primary modes of communication. *Id.* A student’s primary language might be English, ASL, Spanish, or another language or some combination. *Id.* The student’s primary mode of communication could be auditory, oral, ASL, SEE, CASE, cued speech, etc. *Id.* A student’s primary mode of communication receptively may differ from their primary mode of expressive communication. *Id.* For instance, for many DHH students with access to some auditory stimuli, their primary language is English. *Id.* If those students whose primary language is English require an educational interpreter to access the general education lessons, their primary mode of receptive communication is often CASE, not ASL. *Id.* Expressively, however, they may rely primarily on spoken English. *Id.* In other settings, they may not rely on signing at all, receptively or expressively. *Interview with Interpreter*.
9. Skilled signers can often “code switch” or move fluidly between ASL, CASE and SEE and communicate directly with others regardless of which mode of sign the other person is using. *Id.* Newer signers whose primary language and mode of communication is ASL may not be able to communicate directly with someone whose primary language is English and primary mode of communication is CASE without the use of an interpreter, especially if the latter’s primary mode of expressive communication is spoken language. *Id.*

C. District’s Cluster Program

10. District runs a cluster-based program for DHH students at School. *Response*, p. 1. The program includes specially trained teachers of the Deaf, audiologists and educational sign-language

interpreters. *Id.* at p. 2. There are [number of] students who are DHH in the program, which spans preschool to fifth grade. *Id.*

11. Besides Student, there are [number of] students in the program whose primary language and mode of communication is ASL. *Interview with Interpreter.* None of those other students are in Student's grade or any of her classes, and three are in preschool. *Id.*
12. There are [number] more students, none in Student's grade, who rely heavily on CASE. *Id.* These students also have access to some auditory stimuli and oral language and only rely on sign language in some situations. *Id.* Most of the DHH students in the program can speak and usually speak with their hearing peers. *Interview with teacher of the Deaf ("TOD").* These students may expressively use a mix of speech and sign and are not fluent in ASL. *Id.*
13. Initially, the cluster program included a separate class made up of DHH students across multiple grade levels. *Interview with Interpreter.* For kindergarten, first grade and the first half of second grade, Student was educated primarily in that classroom. *Response*, p. 1; *Exhibit B*, p. 1. She received specialized instruction in sign language with DHH peers, spending less than a quarter of her time in general education, for lunch, specials, and recess. *Id.*; *Exhibit L*, pp. 28-29. As a result of the COVID-19 pandemic, students were educated in cohorts, so Student was accessing specials with the class of her DHH peers as well. *Exhibit 3.*
14. In December 2021, District reorganized the cluster program. *Id.* It began grouping students by grade level to increase the time students were spending with grade-level peers. *Id.* This was not intended to change IEP services or any other IEP supports. *Id.* Staff perception is that District closed the self-contained classroom. *Interview with TOD and Interpreter.*

D. 2022 Evaluation

15. Around the same time, in January 2022, District completed a re-evaluation of Student ("2022 Evaluation"). *See Exhibit B*, pp. 1-12.
16. The 2022 Evaluation assessed Student's ASL grammar and vocabulary, identifying relative strengths and weaknesses without providing any norm-referenced scores. *Exhibit B*, pp. 1-2. Student had relative strengths in her ability to use facial expressions when communicating, use of classifiers and ASL pragmatics. *Id.* at p. 11. She had relative needs in the ability to fingerspell, role shift and flag. *Id.* The 2022 Evaluation concludes that Student's "ASL has been developing quickly and she is a strong communicator" but does not include how her skills compared to age or grade level peers. *Id.*
17. The 2022 Evaluation also assessed Student's receptive and expressive language, but no standard scores were provided because the tests were "not normed on kids with hearing loss nor kids who use ASL as their primary language." *Id.* at p. 3. Receptively, Student correctly identified 34 out of 121 items, scoring better when the signs were iconic, meaning they

looked like the images they represented. *Id.* Expressively, Student “named 40 out of 80 of the pictures correctly” indicating an area of need. *Id.* According to the CDE rating scale, Student’s expressive and receptive language were severely impacted. *Id.*

18. In observations, Student “was not observed to initiate conversations with peers” in gym and responded to peers by responding to the educational interpreter. *Id.* at p. 4.
19. Student had “increased her sight word knowledge from 0/100 at the beginning of the year to 8/100 Fry sight words” and from 0/300 to 9/300 Bedrock Vocabulary words. *Id.* She is especially motivated to learn “surrounded by peers and adults who are deaf and use signs to communicate with her directly.” *Id.*
20. Student was two years below grade level, reading at the level of the average kindergarten student in the third quarter. *Id.* at p. 5. To progress in her reading level, Student needed to work on multiple meaning words, like “can,” and bridge phrases. *Id.*
21. District administers two Woodcock Johnson IV subtests, “letter and word identification” and “passage comprehension,” three times a year. *Id.* On the former, Student had made no progress since the beginning of the year and was performing below a kindergarten level. *Id.* On the latter, comprehension, Student had made nine months of progress and was performing at the level of the average student in the 9th month of kindergarten. *Id.*
22. Student was also performing two years behind grade level in writing. *Id.* at p. 6. She needed “to work on understanding the writing process with graphic organizers, sentence starters to provide structure, character development and use of appropriate conventions.” *Id.*
23. Overall, Student was one year behind grade level peers in math. *Id.*

E. January 2022 IEP

24. On January 25, 2022, Parents, TOD, a general education teacher, a speech and language pathologist, an audiologist, a physical therapist, an occupational therapist, Complainant, and Interpreter (collectively, the “2022 IEP Team”) met to develop a new IEP (“2022 IEP”) for Student. *Exhibit N*, p. 3.
25. At that time, Student was placed in “the self-contained classroom” for DHH students at School. *Exhibit A*, p. 6. She frequently asked for repetition or clarification when she did not understand peers or adults. *Id.* at p. 7. Student was friendly and social and “attempt[ed] to interact with hearing peers.” *Id.*
26. The 2022 IEP includes short summaries of the 2022 Evaluations, including hearing and communication. *Id.* at pp. 6-8.

27. The lengthy Student Needs and Impact of Disability section indicates that Student's hearing loss "has caused a delay in her development of receptive and expressive communication skills resulting in a delay of vocabulary development, social skill development, and academic achievement." *Id.* at p. 9. As a result, she has difficulties with academics in general education. *Id.* She needs access to spoken and signed language "to fully comprehend the communicative intent, classroom instruction, and social communication." *Id.*
28. Student also requires visual supports and staff must ensure her attention before communicating. *Id.* She benefits from simplification and repetition of directions and peer responses. *Id.* She "needs access to deaf/hard of hearing peers and adults to internalize her self-worth and visualize her potential." *Id.* Student needs to "increase her focus on the communication intent of her communication partner to increase her understanding during conversations." *Id.*
29. In terms of communication, she needs to "improve her expressive vocabulary using accurate signs, flagging and classifiers when appropriate, and fingerspelling when appropriate." *Id.* There is no mention of ASL or Student's need for or access to peers who use her mode of communication. *Id.*
30. Academically, she needs to increase her word knowledge and knowledge of bridged phrases, as well as reading comprehension and writing. *Id.* The 2022 IEP also includes specific math skills for Student to work on. *Id.*
31. During the meeting, Parent asked if School "could work on spoken language and building [Student's] language through sign." *Id.* at p. 10. He also asked for additional help for Student because family is not able to help much at home. *Id.* Complainant asked what supports Student would have in general education and was told there would be an educational interpreter with Student at all times. *Id.*
32. The 2022 IEP includes nine goals: one writing goal, one math goal, one hearing goal, two reading goals, one gross motor goal, and three communication goals. *Id.* at pp. 11-21.
33. The hearing goal sought to increase Student's self-advocacy by increasing her ability to understand and express her needs in academic and social settings from a baseline of 10% of the time and maintain her engagement in the learning environment using an educational interpreter from 20% of the time. *Id.* at p. 14.
34. The first communication goal targeted Student's vocabulary in relation to literacy experiences. *Id.* at p. 18. The second sought to increase her flagging, or scene setting, when telling a story or describing a picture. *Id.* at p. 20. The final communication goal centered on her ability to ask wh- questions. *Id.* at p. 21.

35. The 2022 IEP includes 20 accommodations, including an educational interpreter, visual supports, “repeat, rephrase and use simplified sign language for understanding of communication,” wait time for responses, preferred seating away from visual/noise distractions, checks for understanding, and “[d]eaf/hard of hearing peers and role models and supports to provide access to alerts and information (Closed captioning, flashing fire alarms/smoke detectors).” *Id.*
36. The 2022 IEP includes the following services:
- **Special Education** from a Deaf educator, outside the general education setting:
 - 460 minutes per week (“MPW”) to support reading;
 - 460 MPW to support writing skills;
 - 90 MPW to support math skills; and
 - 40 minutes per month (“MPM”) to support self-advocacy skills.
 - **Other Special Education** from a Deaf educator:
 - 60 MPW inside the general education classroom to support math skills; and
 - 40 MPM of indirect services.
 - **Audiology:**
 - 35 minutes per year (“MPY”) of direct services outside the general education setting; and
 - 60 MPY of indirect services to support consistent access to instruction and communication.
 - **Physical Therapy:** 80 MPM of direct services from a physical therapist, outside the general education setting for gross motor skill acquisition.
 - **Speech and Language Therapy:**
 - 240 MPM of direct services outside the general education setting; and
 - 15 MPM of indirect services.

Id. at pp. 25-26.

37. The 2022 IEP team considered four possible placements or LREs: general education at least 80% of the time, general education 40-79% of the time, general education less than 40% of the time and a residential facility. *Id.* at p. 27. The 2022 IEP team agreed general education at least 80% of the time was not her LRE because, while Student would receive grade level instruction with an educational interpreter, she would “not have incidental learning with

others whose communication mode is only CASE” and she needs direct instruction from a Deaf educator. *Id.*

38. In general education 40-79% of the time, advantages included grade level instruction from a general educator with an educational interpreter, access to assistive technology, interactions with hearing and Deaf peers, intense services from a Deaf educator in her communication modality and “some incidental learning with others whose communication mode is only CASE.” *Id.* Disadvantages included pulling Student from general education and “receiving access to instruction and communication through the educational interpreter.” *Id.*
39. In general education less than 40% of the time, advantages included direct instruction from a Deaf educator instead of through an educational interpreter, intense academic support from a Deaf educator, an opportunity to interact with and learn from DHH peers, services in a small group setting, and “[o]pportunities for experiential learning and realia during instruction to support language acquisition and background knowledge would be provided.” *Id.* at p. 28. The only disadvantages were that a student with a different name “would not have direct instruction in the general education classroom with grade level peers as well as interactions with grade level peers.” *Id.* The SCO finds that the use of the wrong student’s name here indicates this was copied and pasted from another IEP.
40. Advantages of a residential facility included daily support services from a Deaf educator, ASL as the primary mode of communication, full integration with Deaf peers, an opportunity to “build her self-identity and make connections to others in the community who are deaf” and not having to learn through an interpreter. *Id.* Disadvantages were limited access to hearing peers or general education peers without hearing loss and being away from her family. *Id.* Although not considered by the 2022 IEP Team, the SCO finds that the residential facility for DHH students in Colorado (“Residential School”) often does not have students this young, so she likely would not have access to grade level peers. *Interview with CDE Content Specialist.*
41. The 2022 IEP team determined general education 40-79% of the time to be her LRE. *Id.* Specifically, she would be in general education 44% of the time, twice as long as under the former IEP (“2021 IEP”). *Compare Id.* at p. 28 and *Exhibit L*, p. 31. There is no mention of how the program and placement changes were impacting her direct access to peers. *Id.*

F. January 2022 Communication Plan

42. The 2022 IEP also includes a “Communication Plan for Student Who is Deaf/Hard of Hearing” (“2022 Communication Plan”). *Exhibit A*, pp. 31-33. According to the 2022 Communication Plan, Student’s primary language is “Native language (ASL, Spanish etc).” *Id.* at p. 31. Receptively she is a visual communicator, requiring a sign language interpreter anytime the communicator cannot themselves sign. *Id.* Expressively, she is a “fully sign communicator.” *Id.* The action plan indicates that all staff working with Student will use CASE with her or have an interpreter. *Id.*

43. Student's primary modes of receptive communication include "Speechreading, fingerspelling, Home signs, American Sign Language, Gestures, Picture symbols/pictures/photographs." *Id.* Her primary modes of expressive communication include "American Sign Language, Fingerspelling, Home signs, Gestures." *Id.*
44. In consideration of Student's need for DHH adult role models and peer groups of students in her communication mode or language, the plan notes that she "benefits from opportunities to socialize and communicate with other deaf and hard of hearing peers and adults." *Id.* at p. 32. The action plan indicates that in the cluster program she has "access to DHH peers in the classroom, during weekly DHH morning meeting gathering, and during DHH field trips and events." *Id.* School also says they will send home information about further DHH opportunities "in the community at the parent's expense and transportation." *Id.* There is no mention of whether the primary language of the DHH peers is ASL or if that is their primary mode of communication. *Id.*
45. The plan considers three possible placements: neighborhood school, Residential School, and the cluster program. *Id.* The first "does not allow access to a sign language interpreter or DHH peers and/or adults." *Id.* Residential School requires students to live away from home during the week but allows students "to have access to many DHH peers and adults as well an (sic) exposure to Deaf culture." *Id.* The cluster program allows "daily access to other students who have hearing loss" and the teachers "specialize in working with students who have hearing loss and communicate using sign language and/or spoken language simultaneously." *Id.* The 2022 IEP Team determined that Student still required a program that "provides sign language communication as well as exposure to DHH peers" and Student would remain at the cluster program. *Id.* There is no mention of whether any of the placements would provide access to peers with the same primary language or mode of communication. *Id.*

G. Student's Access to Peers

46. In January 2022, Student started participating in a second-grade classroom where she was supported by Interpreter. *Interview with Interpreter.* Student was very shy and scared when she started in the general education classroom. *Id.* Student missed her friends from the separate classroom. *Id.* Even with an educational interpreter, Student would express sadness that she could not understand conversations in the classroom. *Id.* None of the DHH peers in her second-grade classroom could communicate directly with Student. *Interview with TOD.*
47. In August 2022, Student was excited to return for the new school year, but continued to talk a lot about the time when she was in the self-contained classroom with TOD. *Id.* However, her anxiety quickly began to increase. *Id.* Student regularly says she is sad, asks for others to sign with her or complains when they do not. *Id.* This occurs regularly, as much as twice a day some days. *Id.*

48. Since January 2022, Student has complained of being sad, saying she does not have friends or talking about her friends from the separate classroom. *Interview with Interpreter*. These complaints have increased in frequency this year. *Id.* Interpreter has encouraged Student to advocate for herself and remind her DHH peers to sign and has stepped in herself with such reminders. *Id.* Interpreter has also attempted to intervene in groups to help facilitate communication for Student. *Id.*
49. Student attempts to converse with hearing peers or adults, but when they do not respond in sign language, she either finds an interpreter or walks away. *Exhibit B*, p. 21. She also gives up on conversations when she becomes tired from trying to communicate. *Id.* She wants both hearing and DHH peers to sign with her. *Id.* At times Student expresses her sadness to adults, but “she has learned to accept the situation and perseveres her (sic) daily interactions in a positive manner.” *Id.*
50. At lunch, Student always has an educational interpreter (not always Interpreter), but peers are not always interested in having an adult at the table or waiting for things to be interpreted for Student. *Interview with Interpreter*. Sometimes Student has a great lunch, but she often spends a lot of time talking to the educational interpreter. *Id.*
51. Other students are nice to Student and sometimes play with her, but she does not have any close friendships. *Interview with Teacher*. At recess, Student is most comfortable with one hearing peer who has learned some sign but is frequently absent. *Interview with Interpreter*. When that peer is absent, Student mostly spends time with the educational interpreters, although she will sometimes play with another DHH peer who signs but is not able to communicate directly with Student because of their differing styles and limited abilities at this time. *Id.*
52. In November 2022, TOD approached Complainant and Parents about her concerns, including Student’s lack of peer interaction. *Interview with Complainant; Exhibit 1*, pp. 32-38. This included talking with them about Residential School and a charter school in the metro area that also serves DHH students (“Separate School”). *Exhibit 1*, p. 38. Around the same time, in December 2022, unprompted, Student told Complainant how sad she was to not have friends at School. *Interview with Complainant*.
53. During the 2022-2023 school year, Student is with Teacher’s general education class for breakfast and morning meeting, specials, PE, lunch, recess, and whole group math instruction. *Interviews with Teacher, Interpreter and TOD*. She is also with general education peers for English language development (“ELD”) at the end of the day. *Id.* At all times, Student has access to an educational interpreter. *Interview with Interpreter*.
54. There are [number of] other DHH students in Student’s grade, all of whom are also in Teacher’s general education class. *Interview with Teacher*. These other students’ primary mode of receptive communication is CASE or SEE, at least in the classroom. *Interviews with*

Teacher and Interpreter. Their primary mode of expressive communication is spoken language and they generally do not rely on an interpreter in interactions with hearing peers. *Id.* All [number of students] require an interpreter to communicate with Student. *Interview with Interpreter.*

55. Student is with TOD for literacy instruction in the morning, as well as structured ASL and English, and for math instruction in the afternoon. *Interview with TOD.* For half of the literacy block, there is [number] other DHH student who does not primarily rely on ASL and requires an interpreter to communicate with Student. *Id.* For the second half of that period, another student joins who does use sign and can often communicate directly with Student. *Id.*
56. For structured ASL and English, there are [number of] students, mostly first graders. *Id.* Some of these students sign, but not all of them, and they primarily use CASE and not ASL. *Id.* They are also still learning how to sign. *Id.* Two of them can communicate directly with Student. *Id.* There are no other students present when Student and TOD work on math. *Id.*
57. On Wednesday mornings, the entire DHH program gets together for self-advocacy activities, including visits from Deaf adults from the community. *Id.* Student can communicate directly with a few of the students, but mostly resorts to talking to the adults like TOD and the educational interpreters. *Id.* She tries to sign to other students but ends up looking to adults for clarification when the peer cannot reciprocate. *Id.*

H. Student's Access to Academics

58. Student's receptive and expressive language skills in ASL are in the early to early intermediate stages. *Exhibit 4*, p. 3. Her conversational proficiency is comparable to that of a child between the ages of two and three. *Id.* When assessed using a test not normed on children with hearing loss, Student's expressive and receptive vocabulary was comparable to that of a five-year-old. *Id.* at p. 4.
59. At the start of the year, Student appeared to have regressed and was just as nervous in general education as she had been in January 2022. *Interview with Interpreter.* Student needs structure and struggles with change. *Id.* She was uncomfortable approaching Teacher and needed a lot of explicit instruction to follow classroom routines like getting materials out. *Id.* Student has grown more comfortable approaching Teacher and substitutes this year. *Id.*
60. Student regularly sobs in the general education classroom. *Interview with Teacher.* This occurs anytime she is nervous or anxious, like when she does not understand lessons or enters after a lesson has started and does not know what to do. *Id.* Teacher's classroom is extremely predictable, but it took Student a long time to learn those routines. *Id.* She has become less fearful as she has learned the routines, but she remains anxious. *Id.*

61. Student also struggles with lessons because she lacks so much context. *Id.* Interpreter needs to match the communication modes of all the DHH students in Teacher’s class, which include SEE, CASE and ASL. *Interview with Interpreter.* As a result, she usually interprets primarily in CASE, with additional scaffolding in ASL for Student. *Id.*
62. Student needs lots of one-on-one support from Interpreter to complete work. *Interview with Teacher.* Interpreter provides a lot of additional explanation because Student is so far behind her peers. *Id.* Teacher tries to put Student with peers for group work, but Student usually ends up sitting near peers and working just with Interpreter. *Id.* Student is too far behind even the other lowest performing students in the class. *Id.*
63. Student spends a lot of time trying to follow what is happening during morning meeting when students share about their lives because she does not understand what is being talked about, even with interpretation. *Interview with Interpreter.* She tries very hard to understand the math lesson but struggles in that setting as well. *Id.* Interpreter frequently has to show Student pictures on her phone to explain words Student does not know. *Id.*
64. With little to no hearing, music is particularly inaccessible to Student, so she usually tries to chat with Interpreter. *Id.* During art, Student keeps to herself at a table or talks to Interpreter. *Id.* Student tries to be involved during PE, but she has to keep looking to Interpreter to know what is happening. *Id.* Because of how things have to be broken down to Student’s level, she is always a step behind her peers. *Id.* Nevertheless, she will get in the middle of a group or conflict like she has something to say but will not say anything. *Id.*
65. There are no other DHH students in Student’s ELD class. *Id.* However, the teacher is teaching the signs to go along with each new English word the students learn. *Id.* Student has gained confidence from helping her hearing peers learn how to sign. *Id.* Because all the students are new to English, this class is more accessible for Student and a favorite. *Id.*

I. District Training on DHH Student Communication

66. District trains staff annually on how to develop IEPs and communication plans for DHH students, in accordance with guidance issued by the CDE. *Interview with one of District’s Exceptional Student Services Program Directors (“Director”).* In November 2022, District’s low incidence disability team lead (“Team Lead”) went through the training with staff at School. *Id.; Exhibit M, pp. 1-33.*
67. The training reviews the DHH eligibility criteria. *Exhibit M, pp. 4-10.* It also reviews the requirement to create a communication plan. *Id.* at pp. 11-14. It includes the possible primary languages as well as the modes of communication and the need for an action plan. *Id.* at pp. 15-20.

68. The training next reviews the importance of ensuring DHH students have “a sufficient number of language mode peers” meaning those “who are of the same, or approximately the same, age and ability level” and with whom they can communicate directly. *Id.* at p. 21. It notes that similar hearing status is not the same as comparable language modes. *Id.* Teams are directed to describe the child’s need for DHH adult role models and peer groups and to document who will be responsible for arranging adult role model connections. *Id.* at p. 22.
69. The training talks about discussing the potential placements, including that services cannot be denied because of availability, cost, or the student’s geographic location. *Id.* at pp. 25-26. It specifically describes the “established” continuum of services available in District which “does not change.” *Id.* at p. 27. For students in elementary school, the options are Residential School, the cluster program, or their neighborhood school or a special program with itinerant services. *Id.* In discussing the options, teams can list pros and cons of each or determine a measure that will indicate if a student should continue in a particular placement. *Id.* at p. 28.
70. When TOD started in District 13 years ago, IEP teams would consider Separate School as a possible placement for students. *Interview with TOD.* Then, at some point many years ago, staff were told they had to take Separate School out of all IEPs and communication plans. *Id.*

J. January 2023 IEP Team Meeting

71. On January 17, 2023, Parent, Complainant, Teacher, TOD, a physical therapist, Interpreter, and an audiologist (collectively “2023 IEP team”) met to review and revise a new IEP for Student. *Exhibit A*, p. 1. The 2023 IEP team went over Student’s present levels, including progress on goals, new goals, and proposed services. *Interview with Complainant.*
72. During the meeting, Interpreter asked Complainant if she could help Student, as she is missing a lot of background information. *Id.* Complainant did not think there was anything more she could do, but pointed out that Student was lacking this background information because she cannot hear the conversations around her. *Id.* A substantial amount of learning comes from incidental exposure like listening to conversations or the thoughts and questions of peers. *Interview with CDE Content Specialist.* Student does not have access to that information except through an educational interpreter. *Id.*
73. When they got to the communication plan, Complainant brought up the concerns about Student’s access to peers and asked to consider Separate School as a placement option on the communication plan. *Interview with Complainant.* She did not ask that Student be placed there because Parents did not yet have enough information to know if it would be appropriate. *Id.*
74. TOD indicated that District might not agree to have Separate School included in the communication plan, but she agreed to include it to honor the request. *Interviews with Complainant and TOD.*

75. At the end of the meeting, School staff said they would check with the District about including Separate School and indicated the team might need to reconvene. *Interview with Complainant*. Complainant suggested they finalize the IEP since it was Student’s annual IEP review and they had agreed on goals and services and placement. *Id.* She did not want a second meeting to be rushed. *Id.*

K. February 2023 IEP Team Meeting

76. After the meeting, TOD tried to get direction from the District on next steps. *Exhibit I*, p. 51. A special education coordinator (“Coordinator”) for District told TOD not to close out the IEP because they needed “to meet with the parent again to discuss the continuum of placement options and what can or cannot be in the communication plan.” *Id.* at p. 52. Coordinator also asked for times when she and Director could meet with the School team first. *Id.*
77. The School team met with Coordinator and Director on February 2, 2023. *Exhibit I*, p. 56; *Interview with Teacher*. District staff communicated that Separate School should not have been put into Student’s communication plan. *Interview with Teacher*. Instead, the request should have been included in the parent input section. *Id.* Because Separate School is in another district, there was no way for it to be a possibility in District. *Id.*
78. Meanwhile, on January 31, 2023, Complainant contacted TOD to get a finalized copy of Student’s IEP and was told it was “on hold” because District wanted to meet again. *Exhibit I*, p. 48. TOD did send a copy of the draft IEP that was developed in January, as well as a prior written notice (“PWN”). *Id.* at pp. 48-49. TOD explained that District directed her to keep the IEP open because Separate School was not an option that could be added to the communication plan. *Id.*
79. The PWN (“January PWN”) summarized the services the IEP team agreed to on January 17, 2023. *Exhibit C*, p. 1. It also summarizes the conversation, including that Residential School was not appropriate, that Parent and Complainant requested to add Separate School as a consideration and Student’s need for the services in the cluster program. *Id.*
80. Frustrated, Complainant contacted Director directly to understand why the IEP was “on hold” and why they had not been informed of that before asking. *Exhibit I*, p. 58. Director explained that the IEP was not yet complete because the IEP team needed “to reconvene to discuss the educational options provided by [District]” so the IEP would “accurately reflect the educational options provided by [District] and the discussion/decision made by the IEP team” *Id.* at p. 78.
81. On February 28, 2023, the 2023 IEP Team, with the addition of a speech and language pathologist and Team Lead, met to revise the IEP that had been drafted in January. *Exhibit A*, p. 65. They reconvened “to address further the continuum of placement options that

[District] offers for a student who is deaf or hard of hearing.” *Exhibit D*, p. 3. Prior to the meeting, District was providing the services agreed to in January and outlined in the January PWN. *Exhibit I*, p. 66.

82. During the meeting, Team Lead explained that Separate School could not be listed as a potential placement in Student’s IEP because it is not a part of District’s continuum since it is part of another district. *Id.* at p. 177. *Interviews with Teacher and Complainant*. Complainant did not agree that a student could not be placed at a school in another district but intended to take it up with District staff outside of the meeting. *Exhibit I*, pp. 177-178.
83. Team Lead recommended that District evaluate Student’s social emotional needs as that had not been done “appropriately, despite several concerns being raised.” *Id.* at p. 177. Parent and Complainant did not see the point in evaluating Student because the social emotional concerns stemmed directly from the lack of appropriate peers. *Interview with Complainant*.
84. The 2023 IEP team then went through the continuum of potential placements for Student, considering a neighborhood school, Residential School, and the cluster program. *Exhibit I*, p. 177. Everyone agreed that her neighborhood school would not be appropriate. *Id.* As for Residential School, Parent said Student was too young to be so far away, and Complainant added that removing Student from her family where she feels safe would not improve her social emotional status. *Id.* at pp. 177-178.
85. When considering the cluster program at School, Complainant asked to note that while Student has access to DHH peers, she does not have access to peers with the same mode of communication as her. *Id.* at p. 177. She also requested that the 2023 IEP team document the family’s position that the cluster program did not meet Student’s needs and thus was not providing her with a FAPE and could not be her LRE. *Id.* at p. 178.
86. At the February 2023 meeting, they finalized an IEP for Student (“2023 IEP”). *Exhibit C*, pp. 3-5. The services, goals, and accommodations did not change as compared to what was discussed in January 2023. *Id.* at p. 2. The conversation was limited to reviewing Student’s social emotional concerns, the continuum of placements offered by District and considering the pros and cons of each for Student. *Id.* at p. 2-3.

L. February 2023 IEP

87. According to the 2023 IEP, Student is starting to self-advocate and “enjoys interacting with adults who can communicate with her.” *Exhibit A*, p. 66.
88. The 2023 IEP includes background information and a review of a recent hearing exam noting the severity of her hearing loss. *Id.* at p. 67. Student “is very conscious and aware of the social differences between her hearing peers and herself.” *Id.* at p. 68. At times she becomes sad, telling adults she wants other students to sign with her. *Id.* She sometimes gives up on

conversations because she “becomes tired trying to communicate.” *Id.* She “needs to build on her confidence to share her thoughts both academically and socially.” *Id.*

89. The 2023 IEP also includes a review of her present levels of communication through ASL. *Id.* Student requires explicit teaching and repetition to learn new specific signs and to fingerspell new words. *Id.* Student often requires visuals to answer wh- questions or set the scene before telling a story. *Id.*
90. Her performance is “unsatisfactory” in all academic areas. *Id.* From January 2022 to January 2023, she went from reading at the level of a kindergartener in the first quarter to a kindergartener in the third quarter, approximately one semester of growth. *Id.* She learned 40-60 new sight words from three different lists, although it is unclear how much, if any, overlap there is between these lists. *Id.* She is “determined and is motivated to learn, especially surrounded by peers and adults who are deaf and use signs to communicate with her directly.” *Id.*
91. Student writes in ASL word order and “is learning to change the structure of sentences to English.” *Id.* She continues to need resources like picture dictionaries and graphic organizers and direct instruction from a Deaf educator on the “Bilingual Grammar Curriculum.” *Id.* at p. 69. In math, Student remains “two grade levels behind her peers” although she mastered several skills between August 2022 and January 2023. *Id.* The SCO finds that Student had fallen further behind her peers in math, as she had been only one year behind grade level in January 2022. *See, FF # 23.*
92. The Student Needs and Impact of Disability section is again lengthy, considering hearing, communication, academics, self-advocacy, and gross motor. *Exhibit A, pp. 70-71.* Due to her hearing loss, Student “requires access to an educational interpreter and classroom accommodations in order to have equal and consistent access to all instruction, group learning, and communication.” *Id.* at p. 70. Student also has an educationally significant language delay and needs to work on ASL grammar, asking and answering wh- questions and using specific non-manual markers to express adverbs and adjectives. *Id.*
93. “Due to her hearing loss, [Student] misses incidental learning of language at home and at the school setting which causes gaps in her all of her (sic) academic areas which include reading, writing and math.” *Id.* “She needs visuals and a slower pace to learn and acquire knowledge in all academic areas.” *Id.* A list of the accommodations she requires to access general education is included in this section. *Id.*
94. Student needs to continue to learn sign language to communicate academically and socially. *Id.* at p. 71. To do so, she needs direct instruction in ASL and English and “incidental learning opportunities to interact with signing peers who are deaf and hard of hearing.” *Id.*

95. The Parent input section includes detailed notes on Parent and Complainant comments at the meeting in January 2023. *Id.* at pp. 71. This includes concerns about the need for signing peers both because of the impact on Student’s social/emotional development and her “incidental language learning and development of background knowledge.” *Id.* It also includes a summary of the conversation at the meeting in February, including input from other members of the IEP team. *Id.* at pp. 71-72. It appears the meeting minutes were copied and pasted into this section after replacing the names of District staff with titles. *Compare Exhibit I*, pp. 177-178 and *Exhibit A*, pp. 71-72.
96. The 2023 IEP includes eight goals. *Exhibit A*, pp. 73-82. The writing goal is the same as the 2022 IEP. *Compare Id.* at pp. 11 and 73. The hearing goal, both reading goals, and the gross motor goals are all very similar with increases to some baselines. *Compare Id.* at pp. 11-21 and 73-82. There is also a math goal targeting some new skills and two new communication goals. *Id.* The new communication goals target Student’s ability to use non-manual markers to express adverbs and adjectives and her ability to ask and answer “how,” “where” and “why” questions with moderate visual prompts. *Id.* at p. 80.
97. The 2023 IEP includes 25 accommodations, including those from the 2022 IEP and adding “repeat directions back to check for understanding before completing a task” and access to some specific visual supports. *Id.* at pp. 82-83.
98. The 2022 IEP includes the following services:
- **Special Education** from a Deaf educator, outside the general education setting:
 - 675 MPW to support reading and writing;
 - 225 MPW to support math; and
 - 160 MPM to support self-advocacy and social/emotional skills.
 - **Other Special Education** from a Deaf educator:
 - 40 MPM of indirect services for collaboration.
 - There are no services to be provided inside the general education classroom.
 - **Audiology:**
 - 35 MPY of direct services outside the general education setting; and
 - 60 MPY of indirect services to support her hearing needs.
 - **Physical Therapy:** 80 MPM of direct services from a physical therapist, outside the general education setting to assist in refining and advancing gross motor skill acquisition.

- **Speech and Language Therapy:** 240 MPM of direct speech services outside the general education setting to work on language development.

Id. at pp. 86-87.

99. The 2023 IEP team considered four possible LREs: general education at least 80% of the time, general education 40-79% of the time, general education less than 40% of the time and a residential facility. *Id.* at pp. 88-89. The 2023 IEP team agreed general education at least 80% of the time was not her LRE because, while Student would receive grade level instruction with an educational interpreter, she would “not have incidental learning with others whose communication mode is CASE/ASL” and she needs direct instruction from a Deaf educator. *Id.* at p. 88.
100. In general education 40-79% of the time, advantages included grade level instruction from a general educator with an educational interpreter, access to assistive technology, interactions with hearing and Deaf peers, intense services from a Deaf educator in her communication modality and “some incidental learning with others whose communication mode is CASE/ASL.” *Id.* Disadvantages included pulling her from general education and receiving “access to instruction and communication through the educational interpreter.” *Id.* The SCO finds that CASE and ASL are not interchangeable, and that Student would not have incidental learning opportunities with students whose primary mode of receptive language was CASE if that was not also their primary mode of expressive communication. *Interview with CDE Content Specialist.*
101. In general education less than 40% of the time, advantages included direct instruction from a Deaf educator instead of through an interpreter, intense academic support from a Deaf educator, an opportunity to interact with and learn from DHH peers in her primary communication mode, services in a small group setting, and “[o]pportunities for experiential learning and realia during instruction to support language acquisition and background knowledge would be provided.” *Id.* at p. 89. The disadvantages were that Student would have minimal direct instruction in general education and limited access to peers without a hearing loss. *Id.*
102. Advantages of a residential facility included daily support services from a Deaf educator, ASL as the primary mode of communication, full integration with Deaf peers, an opportunity to “build her self-identity and make connections to others in the community who are deaf” and not having to learn through an interpreter. *Id.* Disadvantages were limited access to hearing peers or general education peers without hearing loss and being away from her family. *Id.* Across all potential LREs, the advantages and disadvantages were almost identical to the 2022 IEP. *Compare Id.* at pp. 27-28 and 88-89.
103. The 2023 IEP team determined general education 40-79% of the time to be her LRE. *Id.* Specifically, she would be in general education 48% of the time. *Id.* at p. 89. More specifically,

“[d]ue to the rejection of [Residential School], it was determined that [Student] would continue in the cluster program for the deaf and hard of hearing.” *Exhibit C*, p. 4. Complainant and Parents believed Separate School was Student’s LRE. *Interview with Complainant*.

M. February 2023 Communication Plan

104. The 2023 IEP also includes an updated communication plan (“2023 Communication Plan”). *Exhibit A*, pp. 92-95. According to the 2023 Communication Plan, Student’s primary language is “Native language (ASL, Spanish etc).” *Id.* at p. 92. Receptively she is a visual communicator, requiring a sign language interpreter anytime the communicator cannot themselves sign. *Id.* Expressively, she is a “fully sign communicator.” *Id.* at p. 31. The action plan indicates that all staff working with Student will use CASE or ASL with her or have an interpreter. *Id.*
105. Student’s primary modes of receptive communication include “Speechreading, fingerspelling, Home signs, American Sign Language, Gestures, Picture symbols/pictures/photographs, Conceptual signs.” *Id.* Her primary modes of expressive communication include “American Sign Language, Fingerspelling, Home signs, Gestures.” *Id.*
106. In consideration of Student’s need for DHH adult role models and peer groups of students in her communication mode or language, the plan notes that Student “benefits from opportunities to socialize and communicate with other deaf and hard of hearing peers and adults.” *Id.* at p. 93. The 2023 Communication Plan notes Parent’s concern for Student’s emotional wellbeing as Student has “expressed her desire for her grade level peers and/or adults to sign at all times.” *Id.* This upsets Student, causing her to breakdown. *Id.* The action plan indicates that in the cluster program she has access to DHH peers during weekly meetings, field trips and events and that educational interpreters are present to relay communication at all times. *Id.* School also says they will send home information about further DHH opportunities “in the community at the parent’s expense and transportation.” *Id.* There is no mention of whether the primary language of the DHH peers is ASL or if that is their primary mode of communication. *Id.* There are also no new action steps as compared to the 2022 Communication Plan despite Student’s breakdowns. *Compare Id.* at pp. at pp. 32 and 93.
107. The 2023 Communication Plan considers three possible placements: neighborhood school, Residential School, and the cluster program. *Id.* The first includes itinerant support but is not appropriate as it does not include access to a sign language interpreter or DHH peers or adults. *Id.* at pp. 93-94. Residential School includes instruction in ASL and access to many DHH peers and adults as well as exposure to Deaf culture. *Id.* at p. 94. However, there is no exposure to the general education setting and the “family does not want [Student] to be away from her family and the safety of the community she has here with them.” *Id.*
108. The cluster program allows “daily access to other students who have hearing loss” and the teachers “specialize in working with students who have hearing loss and communicate using

sign language and/or spoken language simultaneously.” *Id.* In this placement, Student has access to signing peers, but not in her grade level. *Id.* “Her grade-level peers are still acquiring sign language and require prompting to remember to sign with her.” *Id.* The family expressed that Student “needs an environment where she has access to grade-level signing peers throughout the day.” *Id.* However, due to the rejection of Residential School, the 2023 IEP team determined that Student would continue in the cluster program. *Id.*

N. Reevaluation

109. Complainant was skeptical about the value of a social-emotional evaluation when Student’s sadness and loneliness were “directly related to the lack of a signing peer group.” *Exhibit I*, p. 122. TOD agreed that an evaluation would not get at the root of the problem, the “lack of signing peers throughout the day in the mainstream setting.” *Id.* Most likely, all assessments of Student would be conducted through an educational interpreter. *Id.* at p. 123.
110. Ultimately, on April 16, 2023, Parent signed consent for a reevaluation of Student. *Exhibit B*, p. 20. District proposed evaluating Student in the areas of communicative status, academic performance, social and emotional status, health, and motor abilities. *Id.*
111. District completed the evaluation and convened a multidisciplinary team to review the results on May 23, 2023. *Interviews with Complainant and TOD*. Everyone agreed Student continued to be eligible as a DHH student and as a student with a speech and language impairment. *Interview with TOD; Exhibit O*, p. 47.
112. District then convened an IEP team on May 26, 2023. *Exhibit O*, p. 98. The IEP team determined that Student’s LRE was a separate school where she would have the “[a]bility to access communication with all peers and adults freely since they all communicate like [Student] and share her language.” *Id.* at p. 82. This would allow for incidental learning, language acquisition and the development of deeper relationships. *Id.*
113. The updated communication plan notes that Student “benefits from opportunities to socialize and communicate in ASL” with DHH peers. *Id.* at p. 88. It also identifies that due to Student’s abilities, she is not yet able to access academics in the general education setting. *Id.* at p. 90. At the cluster program, she “does not have access to peers that can communicate with her directly” while in a separate school she would be able to communicate directly with all peers and adults since they all share her language. *Id.* at pp. 90-91.
114. On June 1, 2023, District determined that Student would receive her services at Separate School for extended school year services and the upcoming academic year. *Id.* at p. 96. As recently as May 8, 2023, District maintained that general education 40-79% of the time was Student’s LRE and denied any failure to educate Student in her LRE. *Response*, pp. 9-10.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to develop IEPs in 2022 and 2023 that considered Student's unique communication needs and need for a peer group in her primary language and communication mode, in violation 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii). This violation resulted in a denial of FAPE.

Complainant's concern is that Student's IEPs do not appropriately consider Student's communication needs, and particularly her need for direct communication with peers and staff in her primary language and mode of communication, ASL.

A. Legal Requirements for IEP Development

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. *Andrew 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 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a)(1). An IEP must include a statement explaining how the child's disability impacts the student's involvement in and progress in the general education curriculum. *Id.* § 300.320(a)(1)(i). An IEP must also contain measurable annual goals designed to: (1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student's other educational needs that result from his or her disability. *Id.* § 300.320(a)(2). Also, 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. *Id.* § 300.320(a)(4).

All IEPs must consider the communication needs of the child. 34 C.F.R. § 300.324(a)(2)(iv). For DHH students, the IEP must specifically “consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s *language and communication mode*, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.” *Id.* (*emphasis added.*)

In Colorado, the IEP for every DHH student must contain a communication plan. ECEA Rule 4.03(6)(a). The communication plan must identify the student’s primary communication mode. ECEA Rule 4.03(6)(a)(i). The IEP team must also consider the availability of DHH adult role models and a DHH “peer group of the child’s communication mode or language.” *Id.* at 4.03(6)(a)(iii) (*emphasis added.*)

A. IEP Development Process

i. 2022 IEP

Here, the 2022 IEP was developed in January 2022, outside the window of this Complaint. (FF # 24.) Thus, the SCO cannot consider the propriety of the events that occurred in January 2022. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ 3(f). However, the SCO still has authority to consider the propriety of the IEP itself. A deficient IEP continues to violate the IDEA each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day the IEP is in effect. *Weld County Sch. Dist. 6*, 81 IDELR 239 (Colo. SEA April 24, 2022). Thus, the SCO will presume that the development process of the 2022 IEP complied with the procedural requirements of the IDEA. However, the SCO will separately consider below whether the 2022 IEP complied with the second prong and was reasonably calculated to allow Student to receive an educational benefit. *Rowley*, 458 U.S. at 206.

ii. 2023 IEP

Here, the 2023 IEP was developed at meetings on January 17, 2023 and February 28, 2023, with properly constituted IEP teams. (FF #s 71 and 81.) The 2023 IEP contains annual goals to address Student’s academic and communication needs and a statement of the services to be provided. (FF #s 96-98.) It also includes a lengthy statement of the impact of Student’s disabilities on her ability to access the general education classroom and describes several placement options that were considered. (FF #s 92-94 and 99-103.) Finally, it considers her primary language and communication mode and includes a communication plan. (FF #s 104-105.) Thus, the SCO finds and concludes that the development process for the 2023 IEP complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206.

The SCO turns next to the second question of whether the 2022 and 2023 IEPs were substantively appropriate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of the IEPs

i. 2022 IEP

Prior to January 2022, Student was primarily educated in a self-contained classroom for DHH students of various ages. (FF #s 13 and 25.) In December of 2021, District reorganized the cluster program at School to educate students primarily with others in their grade. (FF # 14.) Student was performing two years behind her peers in reading and writing and a year behind them in math. (FF #s 20-23.) The 2022 IEP notes that Student had a hard time accessing academics in general education. (FF # 27.) Student has a significant language delay, but her expressive and receptive language abilities were not compared to grade level peers. (FF #s 4 and 16-17.)

With the closing of the self-contained classroom, the 2022 IEP adjusts Student's services to increase her time in general education with grade level peers. (FF #s 36-41.) The 2022 IEP found general education 40-79% of the time to be Student's LRE. (FF # 41.) In comparing the potential placements, the 2022 IEP team considered whether Student would have access to DHH peers, but it never considered access to peers whose primary language or mode of communication was ASL, or even sign generally. (FF #s 37-41.) The 2022 IEP also never acknowledged or considered how the changes to the cluster program were impacting her access to peers. (*Id.*)

Similarly, the 2022 Communication Plan finds that Student benefits from communicating with other DHH peers and adults and notes that she would have access to DHH peers in her classroom and during weekly meetings for the cluster program. (FF # 44.) However, the 2022 Communication Plan does not consider whether Student would have access to peers with the same primary language, ASL, or primary mode of communication, sign. (FF #s 44-45.) Having peers of a similar hearing status is not the same as having language mode peers. (FF # 68.)

In fact, none of the DHH peers in Student's new second-grade classroom could communicate directly with her, without the help of an educational interpreter. (FF # 46.) Only [small number of] other students in the cluster program primarily communicate through ASL: [small number of students] are in preschool and none are in her grade or her classes. (FF # 11.) Most of the DHH students in the program can speak and usually do so with their peers. (FF # 12.) Because they rely on a mix of speaking and sign, they are not fluent in ASL. (*Id.*) As new signers, young students are less likely to be able to code switch between ASL and CASE. (FF # 9.) Thus, Student, whose primary language is ASL, cannot communicate directly with an inexperienced signer whose primary language is English and primary mode of communication is CASE, especially if that person's primary mode of expressive communication is spoken language. (*Id.*) Even during weekly meetings with all the DHH students at School, Student tries to sign with other students but usually resorts to signing with adults because peers cannot reciprocate. (FF # 57.)

Thus, the SCO finds and concludes that the 2022 IEP does not consider Student's opportunities for direct communication with peers in her primary language, in violation of 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii).

The 2022 IEP also fails to consider Student's academic level and access to the general education curriculum. Interpreter must meet the needs of all the DHH students in the classroom, so she interprets primarily in CASE. (FF # 61.) CASE follows the same word order as English, which makes simultaneous translation easier. (FF # 7.) DHH students with some hearing can use the auditory stimuli as context to clarify the meaning of the signs. (*Id.*) Students without any hearing, like Student, require ASL's unique structure, which paints a picture, to get that context. (FF #s 5, 7.) Student has a significant language delay and her vocabulary is comparable to that of a five year old. (FF # 58.) Her conversational proficiency is more akin to a two- or three-year-old. (*Id.*) As a result, Student lacks a lot of the necessary context to understand lessons. (FF # 61.) Thus, she really needs the additional context provided through ASL.

Student tries very hard to understand what is happening in the general education classroom, but she needs lots of one-on-one support from Interpreter and visuals to explain words she does not know. (FF #s 62-63.) Even with an educational interpreter, Student is unable to understand the lessons or participate in group activities. (FF # 62.) Student tries to participate in specials like music, art and PE but is generally unable to keep up with what is happening. (FF # 64.) A substantial amount of learning also comes from incidental exposure like listening to peer conversations or questions. (FF # 72.) Student only has access to the conversations and comments an educational interpreter chooses to interpret, so she does not have meaningful access to important learning opportunities. (*Id.*) This also limits Student's language learning opportunities. (*Id.*)

Thus, the SCO finds and concludes that the 2022 IEP does not adequately consider Student's academic level or her opportunities for direct instruction in her primary language, in violation of 34 C.F.R. § 300.324(a)(2)(iv).

For these reasons, the SCO finds and concludes that the 2022 IEP was not reasonably calculated to enable Student to receive an educational benefit and violated the IDEA's and ECEA's substantive requirements related to the development of an IEP at 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii). This results in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

ii. 2023 IEP

For most of her day, Student is not able to directly communicate with any of her peers. (FF #s 53-56.) By January 2023, Student was increasingly sad because peers do not sign with her. (FF #s 47-48.) She regularly gives up on conversations with peers and adults. (FF # 49.) This is also impacting

Student's ability to make friends. (FF # 51.) TOD brought her concerns about Student's lack of peers to the family starting in November 2022. (FF # 52.) Student is also easily overwhelmed and regularly sobs in the general education classroom when she does not understand. (FF # 60.)

Despite these growing concerns, like the 2022 IEP, the 2023 IEP does not consider Student's academic level or her opportunities for direct communication with peers or access to instruction in her primary language, ASL. (FF # 87-103.) Instead, the 2023 IEP uses CASE and ASL interchangeably, even though they are not the same. (FF #s 100 and 104.) The 2023 IEP notes her access to peers whose communication mode is CASE/ASL in general education 40-79% of the time and the 2023 Communication Plan instructs that all staff working with her will use CASE or ASL. (FF #s 100 and 104.) She cannot communicate directly with students whose primary mode of communication is CASE and cannot access general education through CASE interpretation. (FF #s 9, 51, 54, 61 and 63.) The Parent Input section includes Complainant's concerns about her need for signing peers, but no changes were made to address these concerns. (FF # 95.)

The 2023 Communication Plan also continues to focus on Student's access to DHH peers, rather than her direct access to peers who share her primary language. (FF # 106.) Although the 2023 Communication Plan acknowledges that Student is struggling because peers do not sign with her, there are no new action steps to address her access to a peer group. (*Id.*)

Thus, the SCO finds and concludes that the 2023 IEP does not consider Student's academic level or her opportunities for instruction or direct communication with peers in her primary language, ASL, in violation of 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii).

For these reasons, the SCO finds and concludes that the 2023 IEP was not reasonably calculated to enable Student to receive an educational benefit and violated the IDEA's and ECEA's substantive requirements related to the development of an IEP at 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii). This results in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

C. Remedies

The SCO concluded that the 2022 and 2023 IEPs violated the substantive requirements of the IDEA and the ECEA because they failed to consider Student's unique communication needs, including her academic level and opportunities for direct instruction and communication with peers in her primary language. To remedy this denial of FAPE, the SCO would have, in part, ordered that District convene an IEP team meeting to review and, as appropriate, revise Student's IEP. However, in this case, District has already revised Student's IEP and placed her in an environment with access to direct instruction and access to peers in her primary language. (FF #s 112-113.) No further meeting is required. To the extent that this substantive violation resulted in a denial of FAPE and deprivation of educational benefit, the impacts are closely tied to the

violation described in Allegation No. 2. The SCO will address an award of compensatory services intended to remedy this violation below.

Conclusion to Allegation No. 2: District failed to offer a full continuum of alternative placements, in violation of 34 C.F.R. § 300.115 and failed to provide an explanation to Parents of all the educational options available to Student, in violation of ECEA Rule 4.03(6)(a)(ii). As a result, District failed to educate Student in her LRE from April 2022 to present, in violation of 34 C.F.R. § 300.114. These violations resulted in a denial of FAPE.

Complainant's concern is that District failed to offer a full continuum of alternative placements to meet Student's unique needs and thus failed to educate her in her LRE.

B. Legal Requirements for LRE Determinations

"Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116.

Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). However, if a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

State law highlights the unique considerations that must go into determining the LRE for DHH students. "It is essential that deaf and hard-of-hearing children, like all children, have an education with a sufficient number of language mode peers with whom they can communicate directly and who are of the same, or approximately the same, age and ability level." *Colorado's Deaf Child Bill of Rights*, HB 96-1041 (1996) (Hereinafter *Deaf Child Bill of Rights*). To address the specific communication needs of a DHH student, the IEP team must consider:

- (I) The child's individual communication mode or language;
- (II) The availability to the child of a sufficient number of age, cognitive, and language peers of similar abilities;
- (III) The availability to the child of deaf or hard-of-hearing adult models of the child's communication mode or language;
- (IV) The provision of appropriate, direct, and ongoing language access to teachers of the deaf and hard of hearing and educational interpreters and other

- specialists who are proficient in the child’s primary communication mode or language; and
- (V) The provision of communication-accessible academic instruction, school services, and extracurricular activities.

C.R.S. § 22-20-108(4.7)(a); *See also*, ECEA Rule 4.03(6)(a).

To allow parents to make informed decisions, “all educational options provided by the school district and available to the child” must be explained to the parent at the time the child’s IEP is written. ECEA Rule 4.03(6)(a)(ii).

Similarly, federal guidance makes note of the unique educational needs of DHH Students. *Federal Department of Education, Office of Civil Rights, Deaf Students Education Services*, 1992. “Even the availability of interpreter services in the educational setting may not address deaf children’s needs for direct and meaningful communication with peers and teachers.” *Id.* This guidance was issued, in part, due to the concern that IDEA’s LRE requirements were being interpreted incorrectly, “to require the placement of some children who are deaf in programs that may not meet the individual student’s educational needs.” *Id.* “Any setting which does not meet the communication and related needs of a child who is deaf” does not offer FAPE and therefore cannot be considered the student’s LRE. *Id.*

Ultimately, placement decisions must be made on an individual basis and “may not be based on category of disability, the configuration of the delivery system, the availability of educational or related services, availability of space, or administrative convenience.” *Id.* A full range of alternative placements includes “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” *Id.* After a decision is made, PWN must include the options considered, including the types of placements that were considered as well as “any specific schools that were actually considered and the reasons why these placement options were rejected.” *Id.*

C. District’s Continuum of Services

School districts must have available a continuum of alternative placements to meet the needs of IDEA-eligible children. 34 C.F.R. § 300.115(a). This continuum must include “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” *Id.* at § 300.115(b). To ensure students are educated in their LRE, school district’s must, as necessary, make “arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).” *Id.* at § 300.118.

In this case, District trains staff annually to develop IEPs and communication plans for DHH students. (FF # 66.) The training accurately differentiates between peers with similar hearing status and peers with comparable language modes. (FF # 68.) It goes on to describe an “established” continuum of services which is the same for every student. (FF # 69.) For

elementary-school-age students, like Student, the options are their neighborhood school or a specialty school with itinerant services, the cluster program at School or Residential School. *Id.* District staff used to be able to consider Separate School but were told many years ago that it was no longer an option. (FF # 70.)

The cluster program used to include a separate class, where DHH students could be educated primarily with DHH peers. (FF # 13.) They have since reformatted the program to group students by grade level to increase the time students could spend with grade-level peers. (FF # 14.) This means IEP teams in District could consider neither separate classroom nor separate school when developing IEPs for DHH students.

Thus, the SCO finds and concludes that District failed to offer a full continuum of alternative placements, in violation of 34 C.F.R. § 300.115. As a result, the SCO also finds and concludes that District failed to provide an explanation to Parent of all the educational options available to Student, in violation of ECEA Rule 4.03(6)(a)(ii).

D. Student's LRE

As explained in the conclusion to Allegation No. 1, neither the 2022 IEP nor the 2023 IEP appropriately considered Student's academic level, need for direct instruction in her primary language or her need for language peers of any age (let alone a need for language peers of a similar age and ability level). These considerations are critical for determining the LRE of DHH students. *Deaf Child Bill of Rights*.

In addition, neither the 2022 IEP team nor the 2023 IEP team considered a full range of alternative placements. Both IEP teams considered general education more than 80% of the time, general education 40-79% of the time, general education less than 40% of the time and Residential School. (FF #s 37 and 99.) Similarly, in the 2022 Communication Plan and the 2023 Communication Plan, the IEP teams considered Student's neighborhood school, District's cluster program and Residential School. (FF #s 45 and 107.)

Even when Complainant raised concerns about Student's access to peers and the team agreed that Residential School was not Student's LRE, District would not consider any other placements. (FF #s 73, 77-80, and 103.) District was adamant that it could not consider Separate School because it was part of another District. (FF #s 77-82.)

General education 40-79% of the time in the cluster program was found to be Student's LRE "[d]ue to the rejection of [Residential School]." (FF # 103.) A student's placement is the "least restrictive environment in which they can receive an appropriate education," not the least bad option. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d at 976. Placement decisions must be made on an individual basis, in conformity with the IEP, considering all the student's unique needs, and not based on the configuration of a district's system or the availability of resources. 34 C.F.R. § 300.116(b); *Deaf Students Education Services*. By rigidly conforming to a prescribed list of

potential placements, District failed to make an individualized determination about Student's LRE based on her unique needs.

Despite the evidence of the harm Student's current placement was causing her, District refused to consider any other options. District maintained that it could not place a student in a school in another district. (FF #s 77-86.) Nothing in the law or guidance supports that position. In fact, District had an obligation to make available a continuum of potential placements, even where that requires making arrangements with other *public* or private institutions. 34 C.F.R. §§ 300.115 and 300.118 (*emphasis added*).

Because District did not make an individualized determination about Student's placement or consider her unique communication needs, the SCO finds and concludes that District failed to educate Student in her LRE from April 2022 to present, in violation of 34 C.F.R. § 300.114.

E. Procedural Violation

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, because District failed to consider Student's unique communication needs, including her academic level, her need for direct instruction in her primary language and her need for a similar aged peer group with a comparable language and mode of communication, Student did not have appropriate access to either peers or academic instruction. By January 2023, Student was increasingly sad about her lack of direct access to peers, she was easily overwhelmed in the general education classroom, causing her to sob, and her academic performance was unsatisfactory in all academic areas. (FF #s 47, 48, 60 and 90.) Student made one semester of growth in reading in a year, causing her to fall further behind her peers. (FF # 90.) She had also fallen further behind her peers in math. (FF # 91.)

At that point, District still did not consider Student's unique educational needs in developing the 2023 IEP. Instead of adjusting her services to meet Student's unique needs, District refused to deviate from a set of established placements which did not consist of a full continuum of alternative placements. As a result, Student remained in an environment that was not appropriate, where she struggled to make progress academically and socially.

Thus, the SCO finds and concludes that District's failure to educate Student in her LRE resulted in a deprivation of educational benefit and a denial of FAPE.

F. Remedies

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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package to help place Student in the same position with respect to making progress on IEP goals if not for the violation.

As a result of District’s failure to consider her unique communication needs and educate her in her LRE, Student has missed out on opportunities for incidental learning of both language and academic lessons. (FF #s 4, 72, 93, 94 and 95). Student is also lonely and has been unable to develop appropriate social relationships. (FF #s 46, 48, 51 and 52.) In light of Student’s young age and her placement at Separate School, the SCO, in consultation with CDE Content Specialist, finds that additional formal academic tutoring is not appropriate. Instead, to remedy this violation, the SCO orders the provision of services where Student can develop and generalize language and social skills, as described in Remedy No. 5.

Conclusion to Allegation No. 3: District did not amend Student’s 2023 IEP outside of an IEP team meeting and thus no violation of 34 C.F.R. § 300.324(a)(6) occurred.

Complainant’s concern is that District amended Student’s IEP after the January 17, 2023 IEP team meeting without the agreement of Parents and outside of an IEP team meeting.

After an annual IEP team meeting, a student’s IEP can be amended either by an IEP team at an IEP team meeting or by agreement of the parent and the district to amend the IEP in writing without an IEP team meeting. 34 C.F.R. § 300.324(a)(6).

In this case, during the January 2023 IEP team meeting, the 2023 IEP Team agreed on Student’s new IEP, including goals, services, and placement. (FF # 75.) The only disagreement was over whether Separate School could be considered as a potential placement in Student’s communication plan, although there was no request to place Student there. (FF #s 73-75.) At Complainant’s request, TOD initially included Separate School as a potential placement in the communication plan, with a discussion about potential advantages and disadvantages. (FF # 74.) However, she warned Complainant and Parent that they might need to reconvene after TOD spoke with District about including Separate School. (FF # 75.)

In fact, District did insist on reconvening the IEP team to discuss the continuum of placements and clarify what could or could not be included. (FF # 76.) In the meantime, District issued the January PWN summarizing the January IEP team meeting, including the services the 2023 IEP Team had agreed upon for Student. (FF # 79.) Although they did not finalize the IEP, District continued to provide the services to which the 2023 IEP team had agreed. (FF #s 76 and 81.)

The 2023 IEP Team reconvened on February 28, 2023 with a District representative, Team Lead. (FF # 81.) Team Lead explained that Separate School could not be listed in Student's IEP and reviewed the continuum of placements available in District. (FF #s 82 and 84.) At that time, Complainant explained Parents' concerns with Student's current placement, which they indicated could not offer FAPE. (FF # 85.) The 2023 IEP team finalized Student's 2023 IEP and, over the objection of Complainant and Parent, maintained her placement in general education 40-79% of the time in the cluster program at School. (FF #s 86 and 103.)

The February IEP team meeting was limited to discussing Student's social emotional concerns and reviewing the continuum of placements offered by District. (FF # 86.) None of Student's goals, accommodations or services changed before or after the February meeting. (*Id.*) Although District did not finalize Student's IEP after the January 2023 meeting, they implemented the supports and services agreed upon by the team. (FF # 81.) To address their concerns about the inclusion of Separate School as a potential placement (but not Student's LRE), they convened the IEP team.

Thus, the SCO finds and concludes that the only changes to Student's IEP were made at a properly constituted IEP team meeting in February 2023, consistent with the requirements of 34 C.F.R. § 300.324(a)(6). No violation occurred.

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

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

A. IEP Development

The SCO finds that the IEP development violations are systemic and likely to have impacted other students in District. District's training highlights the importance of DHH students having language mode peers of a similar age and ability level and accurately differentiates between language mode peers and peers with a similar hearing status. (FF # 68.) However, both the 2022 IEP and the 2023 IEP referenced Student's access to DHH peers. (FF #s 37-41, 44, 45, 99-103, 106 and 108.) Despite acknowledging that ASL is her primary language and sign is her primary mode of expressive and receptive language, neither considers her direct access to peers with a similar language or mode of communication. (FF #s 42-45 and 104-108.) This continued in the 2023 IEP,

even after Complainant specifically raised concerns about Student’s access to peers. (FF #s 73, 83 and 85.)

Of particular note is the fact that despite Complainant’s concerns about Student’s access to direct communication with peers, none of the District administrators involved in this matter identified or addressed this problem either. (FF #s 76-83.) The concern is that despite the training, the confusion about the difference between access to DHH peers and peers with the same language or mode of communication appears to be pervasive from teachers through administration.

For these reasons, the SCO finds and concludes that the violations of 34 C.F.R. § 300.324(a)(2)(iv) and ECEA Rule 4.03(6) are systemic in nature and raise concerns about the appropriate provision of services to all IDEA-eligible DHH students in District. Accordingly, the SCO will set forth specific remedies consistent with the IDEA to ensure accurate understanding of the communication needs of DHH students and the future provision of appropriate services to all IDEA-eligible students in District.

B. Education in the LRE

The SCO finds that the violations regarding the continuum of placements and education in the LRE are systemic and likely to impact other students in District. District maintained repeatedly, including in its training, that it offered a fixed continuum of services for students that was not subject to change. (FF # 69.) Although District has since agreed to place Student at Separate School, it denied this allegation and did not acknowledge any concerns with its established continuum of placements. (FF # 114.) As a result, special education staff in District may continue to advise that District offers only an established continuum of placements for DHH students which cannot change. The concern for the SCO is that other students with unique needs that cannot be met by the established continuum are not receiving a FAPE in their LRE.

Therefore, the SCO finds and concludes that the violations of 34 C.F.R. §§ 300.114 and 300.115 and ECEA Rule 4.03(6)(a)(ii) are systemic in nature and raise concerns about the appropriate provision of services to all IDEA-eligible students in District. Accordingly, the SCO will set forth specific remedies consistent with the IDEA to ensure accurate understanding of IDEAs LRE requirements and to ensure the future provision of appropriate services to all IDEA-eligible students in District.

REMEDIES

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

- a. Failed to consider Student’s academic level or her opportunities for direct instruction and direct communication with peers in her primary language, in violation of 34 C.F.R. § 300.324(a)(2)(iv);

- b. Failed to consider the availability of a DHH peer group of Student’s communication mode or language, in violation of ECEA Rule 4.03(6)(a)(iii);
- c. Failed to offer a full continuum of alternative placements, in violation of 34 C.F.R. § 300.115;
- d. Failed to provide an explanation of all educational options available to Student, in violation of ECEA Rule 4.03(6)(a)(ii); and
- e. Failed to educate Student in her LRE, in violation of 34 C.F.R. § 300.114.

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

1. Corrective Action Plan

- a. By **Tuesday, July 18, 2023**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. District’s Executive Director of Special Education, Director, Coordinator and Team Lead must review this decision, as well as the requirements of 34 C.F.R. §§ 300.114, 300.115, and 300.324(a)(2)(iv) and ECEA Rule 4.03(6). This review must occur no later than **Monday, July 31, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, August 7, 2023**.

3. Training

- a. Director, Team Lead and any other District administrators supporting or supervising District’s programming for DHH students, including coordinators, and all special education staff supporting DHH students, including teachers of the Deaf, educational interpreters, speech and language pathologists and audiologists working at District’s cluster programs or as itinerant providers to DHH students must attend and complete training provided by CDE on the unique communication needs of DHH students and education in the LRE. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114, 300.115 and

300.324(a)(2)(iv) and ECEA Rule 4.03(6) and the related concerns addressed in this Decision.

- b. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.
- c. Such training shall be completed no later than **Tuesday, October 31, 2023**. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **November 7, 2023**.

4. Technical Assistance

- a. Team Lead and Director shall participate in ongoing technical assistance (“TA”) with CDE Deaf Education Specialist. This TA shall include, at a minimum, a review of District’s DHH programing and the needs of current DHH students.
 - i. Team Lead and Director must engage in at least 45 minutes per quarter of TA, with the first session occurring no later than **Friday, August 18, 2023**.
 - ii. CDE Deaf Education Specialist will keep a log of these sessions, including date, length, and subject of session, as well as any agreed upon action items.
 - iii. TA sessions will continue at least quarterly through **June 18, 2024**.

5. Compensatory Services

- a. District shall **pay up to \$480 for Student to participate in after school programming at Separate School** during the 2023-2024 school year.
 - i. If Student is enrolled in available opportunities for a given quarter, according to the requirements of Separate School, District shall pay Separate School directly.
 - ii. If Student or Parents choose not to enroll in any after school programs at Separate School, District shall be excused from paying for programming.

- iii. Parent and Student may opt into as many, or as few, of the options as they wish, up to the \$480 limit. Selected programming must be completed by **June 18, 2024**.
- b. District shall **pay up to \$300 for Student to participate in summer programming at Separate School** during the summer of 2024.
 - i. If Separate School provides and Student wishes to enroll in a summer program in 2024, District shall pay Separate School directly for Student's enrollment.
 - ii. Enrollment in and payment for the summer program must occur prior to June 18, 2024.
 - iii. If Separate School does not offer a summer program in 2024, District shall pay up to \$300 for Student to enroll in another, mutually agreed upon, comparable program. If the parties cannot agree on a program by February 1, 2024, CDE Special Education Monitoring and Technical Assistance Consultant shall select a program by March 1, 2024.
 - iv. If Student or Parents choose not to enroll in the summer programming, District shall be excused from paying for programming.
- c. District shall adjust transportation schedules appropriately to ensure Student can participate in any elected programs.
- d. To verify that Student has participated in the programs required by this Decision, District must submit either proof of payment or proof of Student and Parents' choice not to participate in any programs by **August 22, 2023, October 17, 2023, January 9, 2024, March 13, 2024 and April 15, 2024**.
- e. Services received through this program will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for a given program or portion thereof, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide funding or the program is cancelled, District and Parent must work together to identify another mutually agreed upon alternative. District must immediately notify the CDE of the change.

6. Other Remedies

- a. Based on the outcomes of the other remedies, CDE may require additional training, technical assistance, or revision of policy, procedure, or practice to address identified areas of concern. CDE may also request additional records to ensure identified concerns have been addressed.
- b. Any additional findings of noncompliance identified through these remedies must be corrected consistent with 34 C.F.R. § 300.600(e).

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 18th day of June, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-16

Response, pages 1-13

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: PWNs
- Exhibit D: Meeting Notices
- Exhibit E: Attendance Records
- Exhibit F: Progress Monitoring
- Exhibit G: District Calendars
- Exhibit H: District Policies
- Exhibit I: Correspondence
- Exhibit J: None
- Exhibit K: Verification of Delivery to Complainant
- Exhibit L: Additional Documents
- Exhibit M: District Training
- Exhibit N: PWN
- Exhibit O: IEP Documents

Reply, pages 1-6

- Exhibit 1: Deaf Child's Bill of Rights
- Exhibit 2: OCR Guidance
- Exhibit 3: Letter
- Exhibit 4: Draft Evaluation

Interviews

- Complainant: May 19, 2023
- Teacher: May 22, 2023
- Parent: May 23, 2023
- Interpreter: May 23, 2023
- TOD: May 24, 2023
- Director: May 24, 2023