

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

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**State-Level Complaint 2023:606  
Boulder RE-1J**

**DECISION**

**INTRODUCTION**

On November 7, 2023, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Boulder RE-1J, St. Vrain Valley School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified four 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.

On December 13, 2023, after reviewing District’s Response and completing interviews, the SCO determined that it would be necessary to consider an additional allegation—closely related to but beyond the scope of the initial allegations accepted for investigation—to address the concerns raised in the Complaint and determine whether District denied Student a Free Appropriate Public Education (“FAPE”). This required the SCO to expand the scope of the investigation by adding a fifth allegation subject to the jurisdiction of the state-level complaint process.<sup>2</sup> Expanding the scope of the investigation is consistent with the CDE’s authority pursuant to 34 C.F.R. §§ 300.1 and 300.149.

**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 November 7, 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.

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

<sup>2</sup> On December 13, 2023, District was given notice of this additional allegation, as well as an opportunity to reply. *Response*, pp. 25-29.

## SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to make an offer of FAPE and provide special education and related services in accordance with an IEP from November 7, 2022 to the present, consistent with 34 C.F.R. § 300.323;
2. Failed to develop, review and revise an IEP, from February 2023 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 Student’s language and communication mode, in violation of 34 C.F.R. § 300.324(a)(2)(iv);
  - 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);
  - c. Failing to include measurable annual goals designed to enable Student to be involved in and make progress in the general education curriculum and meet her educational needs, in violation of 34 C.F.R. § 300.320(a)(2); and
  - d. Failing to include the related services Student required to meet her medical and academic needs, in violation of 34 C.F.R. § 300.320(a)(4).
3. Failed to educate Student in the Least Restrictive Environment (“LRE”) from February 2023 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.
4. Failed to conduct a comprehensive evaluation of Student from November 10, 2022 to present, specifically by:
  - a. Failing to properly evaluate Student in all areas related to the suspected disability, specifically communicative status, in violation of 34 C.F.R. § 300.304(c)(4); and
  - b. Failing to review existing evaluation data on the Student, in violation of 34 C.F.R. § 300.305(a)(1).

5. Failed to provide Parent with a copy of Student’s IEP on or around February 24, 2023, in violation of 34 C.F.R. § 300.322(f).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is 13 years old and resides within the boundaries of District. *Response*, p. 1. A middle school in District (“Home School”) is Student’s home school. *Exhibit J*, p. 2. Student is not currently attending any school. *Interview with Parent*.
2. From preschool through fourth grade, Student attended a local charter school (“Charter School”) for students who are Deaf and/or hard of hearing (“DHH”). *Response*, p. 1; *Interview with the Director of Charter School (“Charter Director”)*. Student attended fifth grade at a state school for the deaf and blind (“State School”) while residing in another state. *Response*, p. 1; *Exhibit A*, p. 1.
3. Student is identified as a child with a hearing impairment, including deafness. *Exhibit A*, p. 47. Student is profoundly Deaf, with delays in expressive and/or receptive language. *Interview with Charter Director; Exhibit A*, p. 10. Student’s primary language and mode of communication is American Sign Language (“ASL”). *Exhibit A*, p. 27.

#### **B. Sign Language**

4. ASL is a fully developed language distinct from English. *Interview with CDE Content Specialist 1*. 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. *Id.* For instance, instead of saying “the boy climbed the tree,” in ASL the speaker would begin by setting up the tree before introducing the boy. *Id.*
5. Pidgin Signed English (“PSE”) is a form of sign that mixes ASL signs with English grammatical rules. *Id.* Conceptually Accurate Signed English (“CASE”), a form of PSE, uses signs from ASL while generally following English word order and grammatical structure. *Id.* This makes simultaneous translation easier. *Id.* 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 medical devices like cochlear implants, can use that auditory stimuli as context to clarify the meaning of the signs. *Id.*

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

6. Students who are 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, 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.*
7. Skilled signers can often “code switch” or move fluidly between ASL and CASE and communicate directly with others regardless of which mode of sign the other person is using. *Id.* However, skilled signers who primarily rely on ASL may still have difficulty communicating directly with those who primarily rely on CASE. *Interview with Charter Director.*

### **C. Enrollment in District**

8. Student attended State School until October 10, 2022. *Interview with Parent.* The family moved back to Colorado in late October 2022. *Id.*
9. On November 7, 2022, Parent attempted to enroll Student and her sibling in District. *Exhibit J*, p. 2. Student’s sibling was successfully enrolled in her neighborhood school that day. *Interview with Parent.* Parent also completed paperwork to enroll Student that day and contacted Home School for information about arranging transportation for Student to attend Charter School. *Id.; Response*, p. 25.
10. In her November 10, 2022 email to District’s executive director of special education (“Executive Director”), Parent was clear that she was not seeking a choice enrollment at Charter School, but rather intended to enroll Student in District and believed that Charter School was the only placement where Student could receive a FAPE. *Exhibit J*, p. 2.
11. In response Executive Director sent Parent a consent for evaluation, a release of information which they would need to request Student’s records from State School if Parent was not enrolling in District, and a copy of the procedural safeguards notice. *Id.* at p. 1. Executive Director told Parent that to receive any services, a student had to be enrolled in their “home school” and provided Parent the link if she wanted to enroll Student at Home School. *Id.*
12. Because Parent did not complete the enrollment process for Home School, District did not develop an offer of comparable services. *Response*, p. 26; *Interviews with District’s director of special education (“Director”) and teacher of the deaf (“TOD”).* District specifically points to missing immunization records. *Response*, p. 26.

13. Typically, District would have offered Student services at Home School through an interpreter, but Parent said Student would not attend there. *Interviews with Director and TOD*. Enrollment in a general education setting is not comparable to a separate school for DHH students. *Interview with CDE Content Specialist 1*. It would not be safe or appropriate for this Student as she would not have access to emergency announcements like lockdowns and would be unable to communicate directly with any peers, among other concerns. *Id.*

#### D. 2022 IEP

14. When Parent sought to enroll Student in District in November 2022, her then-current IEP was dated April 21, 2022, from State School (“2022 IEP”). *Exhibit A*, p. 1.

15. According to the 2022 IEP, Student requires medication as needed for allergies and asthma. *Id.* at p. 3. She also has bilateral cochlear implants which she does not wear. *Id.* Student does not wear her cochlear implants because they did not work for her and caused complications including headaches. *Interviews with Parent and Charter Director*.

16. The 2022 IEP reviews Student’s scores on state and district assessments. *Exhibit A*, p. 3. On a district language assessment, in April 2022, Student was performing at a sixth-grade level. *Id.* She could read non-fiction at a fourth-grade level. *Id.* She was performing at a third or fourth-grade level in math and a fifth-grade level in science. *Id.* It is not clear what accommodations were provided for this testing. *Id.*

17. Student is curious and intelligent and “very motivated” if she wants to learn something. *Id.* at p. 4. For instance, she loves learning new languages and learning about Asian countries. *Id.* She loves to read and wants to be an astronaut. *Id.*

18. Student was able to “answer basic questions” about what she read but often missed the text features that would help her answer questions about informational texts. *Id.* She makes up signs based on what she thinks words mean and does not reread for context or confirm with a dictionary. *Id.* Student could “use capitalization, punctuation, and spelling up to a 3<sup>rd</sup> grade level” and could write simple sentences in correct English order. *Id.* She was able to stay on topic with her writing with “some support.” *Id.*

19. Student has a lot of gaps in math. *Id.* Although initially she shut down in math class, saying it was too hard, she had shown growth. *Id.* She tried her best to understand but needed extra time to practice skills. *Id.* As a fifth grader, she was in a third/fourth-grade math class to “help remediate and support her confidence in math.” *Id.*

20. Student required repetition and “heavy encouragement” to do work. *Id.* She “need[ed] directions, questions, and item choices signed to her by a familiar person.” *Id.* The reliance on known signers indicates that Student does not yet have a “clear command” of ASL. *Interview with CDE Content Specialist 1*.

21. The 2022 IEP includes a reading goal, a vocabulary goal and three math goals. *Exhibit A*, pp. 4-6. The reading goal focused on Student's ability to read and understand informational texts. *Id.* at pp. 4-5. The vocabulary goal sought for Student to use "a variety of skills" to determine the meaning of unknown words. *Id.* at p. 5.
22. The first math goal was for Student to be able to add and subtract multi-digit numbers. *Id.* The second math goal focused on Student's understanding of math concepts like place value, numbers expressed in word form and comparing values. *Id.* at pp. 5-6. The final math goal was for Student to solve word problems involving dollar amounts. *Id.* at p. 6.
23. Student's testing accommodations included having directions, questions and answer choices signed to her and verbal encouragement from a "familiar person who has been appropriately trained." *Id.* at p. 7. Administrators would periodically check to ensure she was entering answers correctly. *Id.* Student would have extra time in an area with reduced stimuli and access to an English/sign language dictionary. *Id.* A student who is reading at grade level should not need to have tests signed to her. *Interview with CDE Content Specialist 1.*
24. Student's services included daily instruction in ASL with print materials in English. *Exhibit A*, p. 7. She would also get daily direct instruction and "specially designed lessons" to meet her linguistic needs. *Id.* No amount of either service is specified. *Id.* Student would receive audiology services twice a year for an unspecified amount of time and nursing services as required by her medical condition. *Id.*
25. Accommodations included closed captioning and all the testing accommodations previously mentioned. *Id.* at pp. 7-8.
26. Student's least restrictive environment was a separate school, specifically State School, where she would receive instruction and support services "specially designed for the deaf/hard-of-hearing." *Id.* at p. 9.

#### **E. December Evaluation**

27. On November 10, 2022, Parent received and signed a prior written notice and consent for evaluation ("Consent"). *Exhibit M*, p. 1. District agreed to evaluate Student in the following areas: cognitive, communication, social and emotional learning and academic. *Id.*
28. Parent had provided a copy of Student's then-current IEP and District would request records from State School including prior eligibility information. *Id.* The evaluation would be used to make informed decisions about Student's educational needs. *Id.*
29. Because Parent did not complete the enrollment process for Student to attend Home School, the evaluation process was referred to the District team that evaluates students who are not

enrolled in District. *Response*, p. 26. A school psychologist (“School Psychologist”) and TOD completed the evaluation of Student in one day, on December 7, 2022, with the assistance of an interpreter. *Interview with School Psychologist and TOD; Exhibit B*, p. 1.

30. School Psychologist assessed Student’s general intelligence using a nonverbal screener of cognitive ability. *Exhibit B*, pp. 1, 3. Student scored within the average range. *Id.* at p. 3. District also repeatedly requested records from State School including evaluation reports or progress monitoring data but did not receive either. *Response*, p. 20.
31. No assessment of Student’s communicative status was completed because Parent “reported no concerns with [Student’s] communication.” *Exhibit B*, p. 3.
32. School Psychologist assessed Student’s math skills using the Kaufman Test of Education Achievement and Student scored in the very low range on math calculation and problem solving. *Id.* An interpreter was used during the subtest requiring verbal directions. *Id.* Student’s literacy skills were not evaluated because she “is a strong reader.” *Id.* TOD and School Psychologist did not realize the 2022 IEP indicated that Student was writing at a third-grade level. *Interview with TOD*.
33. To assess Student’s social emotional status, Parent completed a rating form and Student did not “present with any significant social, emotional or behavioral difficulties” other than mild attention concerns. *Exhibit B*, p. 3. Student reported that she enjoys hanging out with friends, “especially at her school,” Charter School. *Id.* at pp. 2, 4. She “showed appropriate social skills” during the evaluation. *Id.* at p. 4. Student did not complete any rating scales or other formal assessments of her social emotional status. *Id.*
34. The Evaluation notes that Student is not attending Home School because Parent had safety concerns. *Id.* at p. 2. Student informally told TOD about her likes and interests, including anime, art, and travel. *Id.*
35. TOD also observed Student for 30 minutes during the academic testing. *Id.* Student had a positive attitude and persevered when struggling. *Id.* at p. 3. She asked for clarification on seven questions and answered three questions incorrectly before the entire question was posed. *Id.* at p. 2.
36. The evaluation report (“Evaluation”) was completed on December 15, 2022. *Id.* at p. 1.
37. On December 22, 2022, a multidisciplinary team (“MDT”), including TOD, School Psychologist, Parent, and an assistant director of special education (“Assistant Director 1”) met virtually to review the evaluation and determine Student’s eligibility. *Exhibit A*, pp. 10-11. Together they determined that Student was eligible as a student with a hearing impairment. *Id.*

38. Specifically, the MDT concluded that in addition to bilateral hearing loss, Student had a delay in auditory skills requiring specialized instruction, a delay in receptive and/or expressive language, a speech impairment, a “lack of adequate achievement” towards grade-level standards in reading, writing and/or math and inconsistent performance in social and learning environments compared to peers. *Id.* Student was determined not to struggle with self-advocacy or utilize specialized technology to access instruction. *Id.*
39. District did not have a draft IEP at the meeting. *Interview with TOD.* The MDT agreed to reconvene after winter break to develop an IEP for Student. *Id.*

#### **F. February IEP Meeting**

40. On February 7, 2023 another assistant director of special education (“Assistant Director 2”) reached out to Parent to see if she was “still interested in enrolling [Student] in a school program.” *Exhibit J*, p. 156. Parent confirmed that she was and that she was available every day at 1 p.m. for an IEP team meeting. *Id.*
41. Assistant Director 2 proposed convening an IEP team meeting on February 24, 2023 and Parent agreed. *Id.* On February 23, 2023, TOD sent Parent a draft IEP and communication plan for the meeting the following day. *Id.* at p. 469. A lot remained “to be determined and completed” during the meeting. *Id.* Assistant Director 2 invited TOD, Parent, Assistant Director 1, and the special education coordinator in charge of DHH programming in a nearby district to the meeting (“Cluster Coordinator”). *Id.* at p. 470.
42. Parent, TOD, Assistant Director 1, and Assistant Director 2 all attended the virtual meeting on February 24, 2023. *Interviews with Parent, Assistant Director 2, and TOD.* There was no general education teacher present. *Id.* Although the others remember Cluster Coordinator attending, she did not believe she attended any meetings without a CDE facilitator. *Interview with Cluster Coordinator.* District did not produce any signature pages and produced only one notice of meeting for any meetings regarding Student. *Exhibit D; Exhibit N*, p. 5.
43. No one took notes during the meeting and TOD recalled Assistant Director 2 leading the meeting while Assistant Director 2 remembered the opposite. *Interviews with Assistant Director 2 and TOD.* TOD developed the IEP based on the 2022 IEP and the Evaluation. *Interview with TOD.*
44. During the meeting they discussed Student’s math deficits and District’s proposed goals, including keeping two math goals from the April IEP and removing one because Student no longer appeared to have needs in that area. *Interviews with Assistant Director 2 and TOD.* They did not consider any other goals. *Id.* They reviewed accommodations and placement as well. *Id.*



45. District did not know why the 2022 IEP included nursing services. *Interview with TOD*. Student required nursing services in order to access medications as needed for asthma and allergies. *Interview with Parent*. A student may not require nursing services in their IEP for the occasional administration of medication, however, depending on the student's medical needs, they might require a health care plan. *Interview with CDE Content Specialist 2*; See CDE, *Individualized Healthcare Plan Process* at p. 2 (June 2019), available at [www.cde.state.co.us/healthandwellness/individualizedhealthcareplanprocesspdfjune2019](http://www.cde.state.co.us/healthandwellness/individualizedhealthcareplanprocesspdfjune2019) (providing instructions for developing healthcare plans).
46. District does not normally include audiology services in IEPs because there is no direct instruction, but it is a service that is always available to students free of charge. *Interview with TOD*. However, Student does not utilize any equipment that would normally be monitored by an audiologist. *Id.* Previously, audiologists would check the site of Student's cochlear implants for signs of infection. *Interview with Parent*. School audiologists typically manage equipment and do yearly evaluations of students. *Interview with CDE Content Specialist 1*. If they happen to notice signs of infection the student would be referred to their private audiologist. *Id.*
47. In terms of potential placements, the IEP team reviewed what District could offer: placement at a neighborhood school with itinerant services, the cluster program for DHH students in a neighboring district ("Cluster Program") and Colorado's state program for the deaf and blind ("Residential School"), which would be a residential program requiring Student to live away from home during the week. *Id.*
48. District told Parent they could not consider Charter School because they do not have a contract with them. *Interview with TOD*. If Student required placement at a school for the Deaf, District's offer would be Residential School. *Id.* When Parent brought up Charter School, she was told it was too expensive, but she could choose to enroll Student and provide transportation herself. *Interview with Parent*.
49. The IEP team did not discuss the differences between CASE and ASL during this meeting or consider Student's ability to learn in CASE. *Interview with TOD*. The draft IEP noted that Student would receive 150 minutes per week to "interact with deaf peers" based on the socializing possible during lunch and "downtime." *Id.*
50. District believed Cluster Program was Student's LRE. *Interview with TOD and Assistant Director 2*. However, at the end of the one-hour meeting, District told Parent to consider the three available options and let them know how she wanted to proceed. *Interview with Parent and TOD*. District did not provide Parent with a copy of a complete IEP with an offer of FAPE after the February 24 IEP meeting. *Response*, p. 22. District did not move forward with placing Student at Cluster Program until April 28, 2023. *Exhibit N*, p. 43.

## G. Cluster Program

51. A neighboring district runs Cluster Program at one of its centrally located middle schools. *Interview with Cluster Coordinator.* There are typically 10-25 DHH students enrolled in Cluster Program. *Id.* Cluster Program is designed to serve a range of students from those with minimally significant hearing loss to those who are profoundly Deaf. *Id.*
52. Cluster Program utilizes a “total communication” philosophy. *Id.* Instruction in the center-based classes is provided in CASE by a teacher of the deaf. *Id.* Depending on their academic abilities, students also take classes in a general education setting with the support of interpreters utilizing CASE. *Id.* If a student does not appear to understand, interpreters may code switch and follow up the CASE interpretation with ASL. *Id.*
53. Direct instruction in ASL is different from direct instruction in CASE and from instruction through a CASE interpreter. *Interview with CDE Content Specialist 1.* A student’s comprehension of a lesson provided in ASL may differ greatly from their comprehension of a lesson in CASE. *Id.* This can be formally evaluated. *Id.* District did not assess Student’s ability to understand ASL or CASE. *Id.*
54. Hearing students are able to simultaneously take notes and continue listening to instruction. *Id.* Teachers providing direct instruction in ASL will stop while students take notes or if they are not looking, and students may only be expected to complete guided notes instead of capturing everything. *Id.* An interpreter must keep pace with the general education teacher, which does not leave students who are dependent on the interpreter a chance to take notes. *Id.* DHH students relying on an interpreter will generally require additional accommodations to support notetaking. *Id.*
55. DHH students used to receiving direct instruction from a TOD may struggle to sustain attention to an interpreter, as that is a completely different experience. *Id.* This ability to sustain attention can also be formally assessed. *Id.*
56. At the time District was looking to enroll Student and currently, Cluster Program has 16 students, including three in Student’s grade. *Interview with Cluster Coordinator.* All three students in Student’s grade take all their core classes in the general education setting, as would Student based on the records Cluster Coordinator reviewed. *Id.* Those three students currently share one interpreter, but they could add another if Student required one because they build the program to meet the needs of the students. *Id.*
57. Currently, only two students, in the grade below Student (so they would not have been enrolled in the spring of 2023), communicate primarily through ASL. *Id.* In the spring of 2023, only one 8<sup>th</sup> grader communicated primarily through ASL. *Id.* The primary language of the remaining students is either CASE or English. *Id.* Twelve of the 16 students can verbally communicate with hearing peers in social situations without the use of an interpreter,

although some are less intelligible than others. *Id.* Eight can hold verbal conversations without the aid of an interpreter in most situations but might need assistance in certain settings like loud rooms or large groups. *Id.* Three primarily utilize CASE while ten are proficient in CASE. *Response*, p. 9.

58. During unstructured times like before/after school or during passing periods students may not have interpreters. *Interview with Cluster Coordinator.* Some students do not want interpreters at lunch because they do not want an adult with them. *Id.*

#### **H. Charter School**

59. Charter School is a school for Deaf students from age 3 through grade 12. *Interview with Charter Director.* Charter School is a public school chartered under the authority of another district (“Charter District”). *Id.*

60. Charter School offers a bilingual program with instruction in ASL and English. *Id.* All teachers and almost all staff and providers are fluent in ASL and instruction is provided directly from teachers in ASL, without the use of interpreters. *Id.* In addition to traditional core classes like math and English, students also enroll in an ASL class where they learn the parameters of ASL like how to use facial expressions for inflection or punctuation or how to do persuasive presentations in ASL. *Id.*

61. Charter School is equipped with specialized, visual, emergency and communication systems with lights in all classrooms, hallways, and bathrooms, that use different colored lights to indicate the start/end of classes, announcements, and emergencies. *Id.* All classrooms are equipped with televisions that can be turned on to access specific announcements or warnings, like a lockdown. *Id.*

62. Charter School currently enrolls 85 students, including 20 in middle school and eight in seventh grade. *Id.* The primary language of all students at Charter School is ASL. *Id.* Some students are enrolled through parent choice while others have been placed at Charter School by eleven different school districts. *Id.*

63. Charter School’s standard contract indicates that Charter School is a school of choice and assesses tuition costs based on the assumption that Charter District will receive any per pupil funding for Student. *Exhibit M*, pp. 10-12.

64. District maintains that they are unable to place Student, or any other students, at Charter School because it is a “school of choice” and there is “no contracting mechanism to ‘purchase services’ for a seat within [Charter School’s] programming.” *Response*, p. 18.

## I. April IEP Meeting

65. A few days after the meeting, Parent called someone at Cluster Program to get more information. *Interview with Parent*. From the call she determined that the program was geared towards students who use CASE because they can both sign and speak. *Id.* They would not tell her how many students used ASL. *Id.*
66. On March 25, 2023, Parent followed up with District saying she was not in agreement with any of the placement options discussed and with their refusal to consider Charter School. *Exhibit J*, p. 152. Parent requested another meeting to discuss the issue. *Id.* Parent was slow to follow up with District because she was caring for an ill family member. *Id.*
67. On March 27, via a google drive link, Assistant Director 2 sent Parent the “Draft IEP” they would be discussing at the meeting. *Exhibit J*, p. 152. District did not send Parent another draft of the IEP or a final version until July 25, 2023. *Id.* at p. 194. Parent and District originally agreed to meet April 17, but no CDE facilitator was available. *Id.* at p. 203. The parties agreed to meet April 25 with a CDE facilitator. *Id.* at p. 613.
68. On April 20, 2023, Parent asked to add several things to the agenda. *Id.* at p. 603. She specifically requested an evaluation of Student’s proficiency in ASL conducted directly by a teacher who is fluent in ASL. *Id.* at p. 604. She recommended specific assessments for that purpose. *Id.* She also requested psychological evaluations by someone fluent in ASL to determine whether any of District’s proposed placements would “have a negative impact on” Student’s wellbeing. *Id.*
69. Parent requested several additional accommodations, including visual alarms in all areas Student would utilize, closed captioning and door-to-door transportation. *Id.* at p. 605. She also raised concerns about the communication plan’s failure to address Student’s need for peers and teachers who primarily use ASL. *Id.* at pp. 605-606.
70. Parent raised concerns about the appropriateness of the peer opportunities at Cluster Program and the detrimental impact of leaving home for Residential School. *Id.* at pp. 606-607. She requested prior written notice explaining District’s refusal to consider Charter School. *Id.* at p. 608.
71. Parent had also invited a lay advocate (“Advocate 1”), a support person whose daughter attends Charter School (“Advocate 2”) and Charter Director to attend the meeting. *Id.*
72. On April 25, 2023 Parent, Advocate 1, Advocate 2, Charter Director, Assistant Director 2, School Psychologist, TOD, Director and a CDE facilitator met. *Interviews with Parent, Assistant Director, and Director*. No general education teacher was present, but Director is licensed as a general education teacher. *Id.* Cluster Director did not attend this meeting. *Exhibit N*, p. 40.

During the meeting, Parent wanted to discuss evaluations, accommodations, communication needs and location of services. *Exhibit J*, p. 603-611.

73. However, Parent agreed to send Student to Cluster Program on a trial basis through the end of the year to gather data that could be considered at a subsequent IEP meeting. *Exhibit C*, p. 1; *Interviews with Parent and TOD*.
74. In response to Parent's request for additional evaluations, District agreed to issue consent "in the coming days" and to contact State School again for additional records. *Exhibit C*, p. 1. District agreed additional evaluations were needed, particularly a "structured interview" to assess Student's social emotional needs. *Id.* at p. 2. District would not be able to assess any language regression without additional records from State School. *Id.*
75. District agreed to add three accommodations: visual aids, closed captioning, and door-to-door transportation. *Id.* at p. 1. All three could be implemented at Cluster Program. *Id.*
76. In response to Parent's concerns about Student's need for an ASL-only environment, District noted that Cluster Program "provides instruction through a Total Communication Model, which includes ASL as one of many communication methods used." *Id.* Cluster Program and Charter School had a similar number of middle school students, but Cluster Program would have an unspecified number of "fewer students" using ASL exclusively. *Id.* During this meeting, the IEP team discussed the differences between total communication and ASL but did not discuss Student's ability to learn through CASE. *Interviews with TOD, Parent and Charter Director*.
77. In terms of placement, Parent reported that Residential School would not work because Student wanted to be home with family each night. *Exhibit C*, p. 1. District "investigated" the possibility of placement at Charter School based on Parent request. *Id.* at p. 2. District considered the costs of Charter School and Cluster Program to help inform its choice. *Id.* at p. 1. Charter School was much more expensive and farther from Student's home. *Id.* District decided that Cluster Program could meet Student's communication needs. *Id.*
78. Assistant Director 2 sent Parent the PWN summarizing the above discussion on May 5, 2023. *Exhibit J*, p. 800. She did not include a consent to evaluate or a final IEP. *Id.* However, Assistant Director 2 sent Cluster Coordinator a finalized IEP on May 1, 2023. *Exhibit N*, p. 42.

#### **J. Student's Attendance at Cluster Program**

79. When Parent first completed the paperwork to enroll Student at Cluster Program, something was wrong, and she had to do it again. *Interview with Parent*. Parent successfully completed the enrollment paperwork on May 12, 2023. *Exhibit C*, p. 3. By the time transportation was established, Student's first day at Cluster Program was Friday, May 19, 2023. *Exhibit J*, p. 124. This coincided with Cluster Program's transition to their finals' schedule. *Response*, p. 9.

80. Student attended Cluster Program for four days during finals. *Id.* During that time, Student was very resistant to engaging in academics. *Interview with Cluster Coordinator.* Interpreters believed the reluctance was not related to difficulties understanding, and she was able to carry on conversations with the interpreters. *Id.* Student did not understand the teachers or interpreters and felt very alone. *Interviews with Parent and TOD.*
81. Student was sad because it was hard to communicate with the other DHH students who used a different form of sign language. *Exhibit C, p. 3.* She was also jealous that the other students had some hearing and verbal abilities. *Id.*
82. Student could not communicate with anyone at lunch, so she called her Parents. *Id.* Overall, she found the school to be big, crowded, and loud. *Id.* She was not sure where to pick up her car service after school and she had no way to ask anyone for help. *Id.*

### **K. May IEP Meeting**

83. On May 25, 2023 Parent, Advocate 1, Advocate 2, Charter Director, Assistant Director 2, School Psychologist, TOD, Director, Cluster Coordinator and a CDE facilitator met to review the IEP and Student's time at Cluster Program. *Interviews with Parent, Assistant Director, and Director.* No general education teacher was present. *Id.*
84. Student joined briefly to share her experiences, as described above. *Id.* Most of the meeting was again spent discussing placement. *Id.* District and Cluster Program want about two months of data to determine if the program is appropriate for Student. *Interviews with TOD and Cluster Coordinator; Exhibit C, p. 3.* District determined that with just four days of data, Cluster Program remained the District's offer of FAPE. *Id.* at p. 4.
85. Cluster Coordinator described the difference between ASL programming and the total communication model. *Interviews with Director and Charter Director.* Cluster Coordinator described their program, but there was no specific discussion of whether that program was appropriate for Student. *Interview with Charter Director.*
86. Charter Director and Advocate 2 tried to highlight the importance of ASL as Student's primary language. *Id.* Student raised concerns about the lack of peers utilizing her mode of communication, but the rest of the team appeared focused on the number of DHH peers, rather than on their ability to communicate directly. *Id.*
87. District had looked into contracting to place Student at Charter School between the meetings. *Interview with Director.* Charter School would not sign District's standard contract for purchasing services. *Id.* District was not comfortable signing Charter School's contract because it did not follow the IDEA placement process. *Id.* District did not believe it was possible to place a student at Charter School but agreed to continue investigating. *Id.*

88. Parent raised several concerns about the appropriateness of Cluster Program. *Exhibit C*, p. 4. Although the alarms have visual indicators, the school building did not have “adequate visual aids for [Student].” *Id.* Student had trouble navigating after school without the assistance of an interpreter. *Id.* Three other students in the grade were not an adequate peer group. *Id.*
89. On June 5, 2023, Assistant Director 2 sent Parent a PWN summarizing the May meeting. *Exhibit J*, p. 187. Parent was also sent a consent for additional social emotional evaluations. *Id.* The email did not include a finalized IEP. *Id.* Parent never realized she received a consent form and did not sign it. *Interview with Parent.*
90. According to the PWN issued after the May meeting, District’s offer of FAPE at the time of enrollment was placement at Home School with an interpreter. *Exhibit C*, p. 4. Since the February IEP team meeting, District said the offer had been placement at Cluster Program after Parent declined to send Student to Residential School. *Id.* District did not make any changes to the IEP at the May meeting. *Id.*

#### **L. July IEP Meeting**

91. An IEP team reconvened on July 26, 2023 with another CDE facilitator. *Exhibit J*, p. 194. Assistant Director 2, Director and TOD were present for District. *Id.* Parent, Advocate 1, Advocate 2 and Charter Director were also present. *Interview with Parent.* No general education teacher was present. *Interview with Assistant Director 2.*
92. The IEP team discussed evaluations, but District did not have anyone who could evaluate Student directly in ASL. *Interview with Parent.* Parent remained unwilling to send Student to Cluster Program, which she believed to be inappropriate. *Id.*
93. District agreed to continue exploring whether they could contract with Charter School for services. *Interviews with Parent and Assistant Director 2.* However, no changes were made to Student’s IEP at this meeting. *Id.*
94. As an interim measure, District also offered to have Student attend a District middle school with one other DHH peer and an interpreter. *Id.* When Parent went to tour that school, she was unable to meet the other student or the interpreter, but she was told that student was just learning sign from the interpreter. *Interview with Parent.* Student and the peer would also have to have the same schedule or be without an interpreter. *Id.*

#### **M. July IEP**

95. Because Student was not enrolled in a District school, her records were not maintained in District’s usual data management system. *Response*, p. 22; *Interview with Director.* District

produced one finalized, dated IEP for Student from July 26, 2023 (“July IEP”). *Exhibit A*, pp. 47-63.

96. The Student Strengths section, copied from the 2022 IEP, notes that Student is curious and intelligent with a strength in reading and an interest in languages and Asian countries. *Exhibit A*, pp. 4, 49. The testing results from the 2022 IEP and a summary of Student’s reading, writing and math abilities according to State School are included. *Id.* at pp. 3, 4, 50-51.
97. The July IEP also includes a brief summary of the Evaluation, noting that Student’s cognitive skills were in the average range and her literacy skills were not evaluated. *Id.* at p. 51. Student scored in the very low range on the math assessments. *Id.* Parent did not report significant social emotional concerns, and Student was engaged and animated during the evaluation. *Id.* at pp. 51-52.
98. The student needs statement is also copied from the 2022 IEP. *Id.* at pp. 4, 52. Student needs “directions, questions and item choices signed to her by a familiar person,” as well as repetition and encouragement. *Id.* She also needs extended time on tests and assignments and assessments administered by a familiar person. *Id.* Finally, because ASL is her primary language, “she needs an ASL dictionary.” *Id.*
99. In December 2022, Parent noted concerns with Student’s math abilities and safety concerns related to sending Student to Home School, which is why Student was not attending school. *Id.* at p. 52. In February 2023, Parent agreed that Cluster Program was better than itinerant services in a District school but refused to send Student because she needs a program where she can communicate directly with deaf peers and teachers. *Id.* Parent did not believe Student could make progress at Cluster Program. *Id.* The informal interview from the Evaluation is copied as Student input. *Id.* at pp. 52-52; *Exhibit B*, p. 2.
100. Student is Deaf and “requires access to signed, visual communication throughout the school day.” *Exhibit A*, p. 54. Student required special transportation, but the IEP does not specify what or why. *Id.* She did not require a health care plan and no other special factors applied. *Id.*
101. The July IEP includes two annual goals in math problem solving and math computation. *Id.* at pp. 56-57. Both are pulled directly from the 2022 IEP. *Id.* at pp. 5-6, 56-57.
102. The July IEP includes nine accommodations taken directly from the 2022 IEP. *Id.* at pp. 8, 58. There are no new accommodations to support Student’s enrollment in the general education setting. *Id.* Visual aids and closed captioning are not listed. *Id.*
103. According to the July IEP, Student required the following services:



- 250 minutes per week (“MPW”) of direct instruction from a special education teacher outside the general education setting to address math goals;
- 1000 MPW of direct instruction by a teacher of the deaf “utilizing total communication, in the self-contained setting to address her communication needs;”
- 1000 MPW of interpreting services for “communication access in the general education setting; and
- 150 MPW “for opportunities to interact with deaf peers to address her social needs.”

*Id.* at pp. 60-61.

104. Student’s LRE was general education 40-79% of the time. *Id.* at p. 62. No advantages or disadvantages of different placements are listed. *Id.* at pp. 61-62.

105. The embedded PWN in the July IEP notes that the IEP team determined that placement at Home School with an interpreter and itinerant support from a teacher of the deaf was not appropriate because Student needed “a critical mass of peers with whom [she could] communicate directly.” *Id.* at p. 62. The IEP team determined that Cluster Program could meet Student’s needs, but Parent disagreed. *Id.* District “explained that transportation is not provided for charter schools and gave parent time to consider placement options.” *Id.*

#### **N. Student’s Communication Plan**

106. Student’s IEP also includes a “Communication Plan for Student who is Deaf/Hard of Hearing” (“Communication Plan”). *Id.* at pp. 27-28. The Communication Plan notes that Student’s primary expressive and receptive language and communication mode is ASL. *Id.* at p. 27. The “Action Plan” to address this is providing an interpreter and instruction “in ASL.” *Id.* ASL is Student’s only mode of communication. *Id.* A student with one mode of communication cannot code switch between different forms of sign language. *Interview with CDE Content Specialist 1.*

107. The Communication Plan also considers Student’s need for DHH adult role models and peer groups “in sufficient numbers” in her “communication mode or language.” *Exhibit A*, p. 28. According to the Communication Plan, research shows that exposure to other students and adults with hearing loss is important for DHH students. *Id.* Students “should have opportunities to socialize with peers with whom they communicate easily.” *Id.* The IEP team determined that Cluster Program would be the “best placement to meet [Student’s] academic, social, and communication needs.” *Id.*

108. A communication plan should address a specific student’s need for peers and role models, not what the research says. *Interview with CDE Content Specialist 1.* This plan does not consider whether Student will have access to peers or role models who utilize her

communication mode. *Id.* An appropriate communication plan also needs to gather information from the student about her needs, to determine if they are being met. *Id.*

109. The Communication Plan lists the continuum of placement options that were considered including itinerant support, Cluster Program, and a school for the Deaf. *Exhibit A*, p. 28. The school team determined that Cluster Program would meet Student’s needs because she would benefit from an environment where she could interact “with DHH peers on a daily basis.” *Id.*
110. The Communication Plan notes that service providers must be proficient in the student’s primary communication mode or language. *Id.* For Student, the Communication Plan notes “Instruction provided by non-signing teachers via an ASL interpreter, supported by an itinerant teacher of the deaf/hard of hearing; Direct instruction from teachers of the deaf fluent in ASL.” *Id.* The related action plan is that the interpreters at Cluster Program “are all fluent in the utilization of total communication, including sign language.” *Id.*
111. Finally, the Communication Plan considers the student’s entire day, including transition times, and what communication-accessible services will be provided. *Id.* Student’s Communication Plan notes that she can participate in any school sponsored activity with an interpreter “or someone fluent in ASL.” *Id.* If Student wants to access school sponsored activities, family should inform school staff ahead of time to secure an interpreter. *Id.*
112. This section should address a student’s full day, including all settings in which an interpreter will be provided. *Interview with CDE Content Specialist 1.* This is also where safety concerns, like how a student will navigate hallways or access emergency alerts, should be addressed. *Id.*

#### **O. Student’s Current Status**

113. Due to concerns about Student’s safety and the ability of Cluster Program to address Student’s language and social emotional needs, Student has not returned since her four days in May 2023. *Interview with Parent.* Parent is unable to transport Student to Charter School due to her job, so she has not enrolled Student through the choice enrollment process. *Id.*
114. To date, Student remains at home where she works on workbooks when she can. *Id.* She misses her friends and video chats when she can. *Id.* Parent and Student’s sibling both sign, but they are not as fluent as Student. *Id.* Parent is concerned that Student’s language abilities are regressing without use and that she is not learning new signs. *Id.*

## **P. District's New Procedure**

115. In response to the challenges identified in this case, District created a new procedure for creating and storing records for new students who are not currently attending a District school. *Response*, p. 22; *Exhibit M*, p. 5.
116. The new procedure identifies a process for storing special education forms for such students in its usual data management system. *Exhibit M*, p. 5. This plan identifies what to do if a student enrolls but is attending a private school, requesting placement or evaluation or “does not plan to attend their home school.” *Id.*
117. The procedure identifies who will be responsible for which steps and where records will be stored. *Id.* However, the procedure makes no mention of identifying and offering comparable services to students who are requesting placement/not attending their home school because they are transferring from a specialized program like a facility or separate school. *Id.*

## **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District failed to make an offer of FAPE and provide special education and related services in accordance with an IEP from November 30, 2022 to April 25, 2023, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.**

If a student has an IEP and moves to a new school district in a new state within the same school year, the new school district (in consultation with parents) must provide comparable services until the new school district: (1) conducts an evaluation if deemed necessary or (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(f).

Enrollment triggers the duty to provide “comparable” services. *N.B. v. State of Hawaii, Dep't of Educ.*, 63 IDELR 216 (D. Hawaii 2014). There is not a set timeline for the new school district to adopt an IEP from the old school district or develop and implement a new IEP. *See* 34 C.F.R. § 300.323. However, the new school district must act “within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.” *Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11).

Comparable services are “similar” or “equivalent” to those services described in the child’s IEP from the old school district, as determined by the IEP Team at the new school district. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46681 (Aug. 14, 2006). Whether services are comparable depends on the facts of the case. *See, e.g., Palo Alto Unified Sch. Dist.*, 114 LRP 1431 (SEA CA 2013) (finding

that placement of a child with pica and food allergies in an isolated classroom was comparable to the in-home placement required by the child's prior IEP).

The new school district is not required to replicate the services the student received from the old school district. *See, e.g., Sterling A. v. Washoe County Sch. Dist.*, 51 IDELR 152 (D. Nev. 2008) (holding that a district could provide school-based services to a child with a cochlear implant who received home-based services from his former district). But if a district deviates too far from a child's existing program, it may violate the IDEA. *See, e.g., Alvord Unified Sch. Dist.*, 50 IDELR 209 (SEA CA 2008) (finding that an orthopedic impairment special day class was not comparable to a child's prior placement because it served students who functioned on a much lower level and did not provide opportunities to interact with typically developing peers). The requirement to provide "comparable" services includes a duty to provide "temporary goals" that align with the annual goals described in the child's prior IEP. *Letter to Finch*, 56 IDELR 174 (OSEP Aug. 5, 2010).

Each school district, in providing for the education of children with disabilities within its jurisdiction, "must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163 and §§ 300.165 through 300.174". 34 C.F.R. § 300.201. While a school district is free to write its own policies and procedures, there is no legal authority that permits a school district to use strict adherence to its own policies as a basis to avoid its responsibilities under the IDEA. *El Paso County School District 49*, 121 LRP 32227 (SEA CO 6/1/2021). To the extent that a school district's policies and procedures create artificial barriers that prevent vulnerable students with disabilities from accessing special education and related services guaranteed by the IDEA, those policies are inconsistent with the spirit of the Act. *Id.*

#### **A. Enrollment in District**

District contends that it was not obligated to provide Student with an offer of comparable services because she was not enrolled. (FF # 12.) District is correct that enrollment triggers the obligation to provide comparable services to a transfer student. *N.B. v. State of Hawaii, Dep't of Educ.*, 63 IDELR 216 (D. Hawaii 2014). However, in this case Parent did complete paperwork to enroll Student in District. (FF # 9.) She also made clear her intent to enroll Student in District and seek placement at Charter School through District. (FF # 10.) What Parent did not do was enroll Student at or send Student to Home School. (FF # 12.) District showed Parent where to complete the enrollment process at Home School, but nothing in the Record suggests that Parent was asked to submit immunization records or told that an offer of services was conditional on the completion of certain steps. (FF # 11.) Indeed, strict reliance on policies or procedures that create an artificial barrier to the provision of services violates the spirit of the IDEA. *El Paso County School District 49*, 121 LRP 32227 (SEA CO 6/1/2021).

In this case, because Parent completed enrollment paperwork for Student and maintained her intent to enroll Student in school programming through District, the SCO finds that Student was enrolled in District as of November 7, 2022. (FF #s 9, 10, 39.) As such, Student was also entitled

to an offer of comparable services until District could develop and adopt an IEP, through the conduct of an evaluation if necessary. 34 C.F.R. § 300.323(f).

### **B. Comparable Services**

Although the May PWN indicates that placement at Home School with an interpreter was District's offer of comparable services, there is no indication that such an offer was made to Parent at the time of enrollment. (FF #s 12, 90.) Further, at the time of enrollment, Student's LRE was a separate school with instruction in ASL and specially designed services for DHH students. (FF #s 24, 26.) While a district is not obligated to exactly replicate a student's services, enrollment in a general education setting with an interpreter is not comparable to a separate school setting for DHH students. (FF # 13.)

Thus, the SCO finds and concludes that District failed to make an offer of comparable services for Student at the time of enrollment, in violation of 34 C.F.R. § 300.323(f). In fact, as will be discussed in more detail in Allegation No. 2, District did not offer any services until April 25, 2023, after completing an evaluation and two IEP meetings. (FF #s 50, 73, 77.)

The IDEA does not define what constitutes a reasonable amount of time to develop an offer of comparable services. In this case, District had Student's enrollment paperwork and prior IEP by November 10, 2022. (FF #s 9, 27, 28.) Given Student's unique needs requiring placement in a separate setting, the SCO finds that District might reasonably have needed a couple weeks to identify an offer of comparable services, but District should have made an offer of comparable services by November 30, 2022. Thus, the SCO finds and concludes that District failed to offer comparable services from November 30, 2022 until April 25, 2023, or five months.

A showing of educational harm is not required to conclude that Student here is entitled to compensatory services. Instead, it is sufficient to consider the timely provision of educational services, comparing the services Student should have received to the services Student actually received. *See Holman v. District of Columbia*, 67 IDELR 39 (D.D.C. 2016) (stating that "[t]he 'crucial measure' under the materiality standard is the 'proportion of services mandated to those provided' and not the type of harm suffered by the student.")

If District had provided comparable services to those in Student's 2022 IEP, she would have received daily instruction in ASL in a separate school setting with specially designed instruction for DHH students. (FF #s 24, 26.) Instead, she received no services for five months, while District conducted an evaluation and then developed an IEP. (FF #s 12, 34, 73.) The SCO finds and concludes that this constitutes a material difference between the services Student received and those she should have received, resulting in a denial of FAPE. Because the allegations here are closely related, the SCO will order a package of remedies at the end of this decision which is designed to remedy the violations.

**Conclusion to Allegation No. 2: The July IEP was not timely developed by an appropriate IEP team, did not consider Student’s unique communication needs and need for a peer group in her primary language and mode of communication, and did not include appropriate annual goals, in violation of 34 C.F.R. §§ 300.306, 300.320(a)(2), 300.321(a)(2), 300.323(c), 300.324(a)(2)(iv) and ECEA Rule 4.03(6)(a)(iii). These violations resulted in a denial of FAPE. The July IEP did include services that were reasonably calculated to allow Student to access her education, consistent with 34 C.F.R. § 300.320(a)(4).**

#### **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.

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).

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).

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). Related services mean supportive services, including speech and language pathology, psychological services and physical and occupational therapy, that “are required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.34. Related services must be included in a student’s IEP when they are necessary for the student to benefit from special education. *See In re: Student with a Disability*, 65 IDELR 160 (SEA ID 2015) (holding that an IEP need not include a one-to-one aide where other options are available for facilitating communication between school and home).

## **B. IEP Development Process**

### *i. Timeliness of the Development Process*

The SCO must first determine when District first developed an IEP for Student.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). Once a student is found eligible, an IEP must be developed in accordance with 34 C.F.R. §§ 300.320-300.324. 34 C.F.R. § 300.306(c)(2). Each public agency must ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education services. *Id.* at § 300.323(c)(1). Once developed, the public agency must ensure special education and related services are made available to the student as soon as possible. *Id.* at § 300.323(c)(2). To that end, a final IEP must be issued in a timely manner after an eligibility determination. *Delaware Cnty. Intermediate Unite No. 25 v. Martin K.*, 831 F. Supp. 1206, 1215 (E.D. Pa. 1993) (holding that a district’s failure to issue a final IEP for nearly four months after determining the student eligible was a procedural IDEA violation). In Colorado, an initial IEP must be developed within 90 days of when parents provide consent for an initial evaluation. ECEA Rule 4.03(1)(d)(i).

Parents do not have “veto power” over IEP team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15). An IEP meeting “serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child.” *Letter*

to *Richards*, 55 IDELR 107 (OSEP 2010). “The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . . .” *Id.*

Here, Parent provided consent for the Evaluation on November 10, 2023. (FF # .) The MDT determined that Student was IDEA-eligible as a child with a disability on December 22, 2022. (FF # 38.) District then did not convene an IEP team until February 24, 2023. (FF # 42.) Although District provided a draft beforehand, much remained to be “determined and completed” during the meeting. (FF # 41.) During the meeting, the IEP team discussed three possible placements for Student, including general education with an interpreter, Cluster Program and Residential School. (FF 47.) However, the IEP team did not determine which was Student’s LRE. (FF # 50.) Instead, they told Parent to consider the three options and let them know how she wanted to proceed. (*Id.*) They did not provide Parent with a finalized offer of FAPE after the meeting or move forward with enrolling Student at Cluster Program at that time. (*Id.*) If the IEP team was unable to reach consensus, it was District’s responsibility, and not Parent’s, to identify Student’s LRE. Because they did not do so, the SCO finds and concludes that District did not develop an IEP at the February IEP team meeting.

On March 27, 2023, District sent Parent another “Draft IEP.” (FF # 67.) Another IEP team convened on April 25, 2023 to review Student’s IEP. (FF # 72.) At that meeting, District decided that Cluster Program could meet Student’s needs. (FF # 77.) Although they did not send Parent a final IEP, they communicated that determination to Parent via a PWN and sent a final IEP to Cluster Coordinator. (FF #s 77, 78.) Although additional IEP meetings were held on May 25 and July 26, no further changes were made to Student’s IEP. (FF #s 83, 90, 91, 93.) Thus, although Student’s IEP is dated July 26, 2023, the SCO finds that District finalized Student’s IEP and the offer of FAPE at the April 25, 2023 IEP team meeting. (FF # 95.)

This means District first convened an IEP team meeting more than 60 days after determining that Student was eligible and finalized an IEP more than four months after finding her eligible and five months after receiving consent for the evaluation. Therefore, the SCO finds and concludes that District failed to convene an IEP team within 30 days of determining that Student was eligible and failed to issue a final IEP in a timely manner after receiving consent to evaluate and finding her eligible, in violation of 34 C.F.R. §§ 300.306, 300.323(c) and ECEA Rule 4.03(1)(d)(i). *See, San Louis Valley Boces*, 123 LRP 33004 (SEA CO 7/12/23) (finding that a four-month delay in finalizing an IEP for an eligible student was not reasonable).

#### *ii. Appropriateness of the IEP Teams*

In this case, the July IEP also was not developed by an appropriate IEP team.

“Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of . . . FAPE to the child, participate in the child’s IEP Team meeting.” *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011). The



IDEA therefore differentiates between mandatory and discretionary IEP Team members. See *Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include parents, at least one special education teacher, a district representative with knowledge of the district's available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). In addition, if the student is, *or may be*, participating in the regular education environment, the IEP team must include at least one general education teacher. 34 C.F.R. § 300.321(a)(2) (emphasis added). The general education teacher can be someone who would be responsible for implementing the student's IEP. *Hensley v. Colville Sch. Dist.*, 51 IDELR 279 (Wash. Ct. App. 2009), *cert. denied*, 110 LRP 10834, 130 S. Ct. 1517 (2010) (holding that a teacher who had never worked with student but would be responsible for implementing the IEP was an appropriate IEP team member.). If the IEP team is considering placement in a general education setting, the failure to include a general education teacher may result in a deficient IEP. See, e.g., *M.L. v. Federal Way Sch. Dist.*, 42 IDELR 57 (9th Cir. 2004), *cert. denied*, 112 LRP 8049, 545 U.S. 1128 (2005) (holding that because the student might have been placed in an inclusion classroom, the district erred in holding an IEP meeting without a general education teacher).

In this case, no general education teacher was present at the February IEP team meeting. (FF # 42.) The only general education teacher at the May IEP meeting was Director, who had never taught Student and would not be responsible for implementing her IEP. (FF # 72.) The SCO recognizes that Student was new to District and had never attended a general education class before, so there was no general education teacher who had worked with her. (FF # 2, 9.) However, District was considering placement at a neighborhood school with support and Cluster Program, where Student would be enrolled in general education classes, so there were general education teachers who might have been responsible for implementing Student's services. (FF #s 47, 56.) Learning via an interpreter is a different skill and students relying on interpreters generally require additional accommodations. (FF #s 53, 54.) The July IEP does not include any new accommodations to support participation in general education. (FF # 102.)

The SCO finds and concludes that the IEP teams failed to include a general education teacher, in violation of 34 C.F.R. § 300.321(a)(2) and that this failure resulted in an IEP that did not adequately consider how Student's needs would be impacted by the new placement.

Because the July IEP was not developed in timely fashion or by an appropriately convened IEP team, the SCO finds and concludes that the development process for the July IEP did not comply with IDEA's requirements. *Rowley*, 458 U.S. at 206. Nevertheless, the SCO still turns to the second question of whether the July IEP is substantively appropriate. *Rowley*, 458 U.S. at 207.

### C. Substantive Adequacy of the IEP

#### i. Communication Needs

Parent's concern is that the July IEP does not adequately consider Student's communication needs, including opportunities for direct communication in her language and mode of communication.

Prior to enrolling in District, Student had always attended separate schools for DHH students, with no access to general education peers. (FF # 2.) Student's primary language and mode of communication, expressively and receptively, is ASL. (FF # 106.) ASL is her only mode of communication, which means she cannot code switch between different forms of sign language. (*Id.*) However, instead of considering her opportunities for direct communication with peers or adults in her mode of communication, the Communication Plan notes the general importance of exposure to other DHH peers. (FF # 107.) The Communication Plan should have addressed Student's need for direct access, instead of reporting on the research. (FF # 108.) Access to DHH peers is not the same as access to peers or role models who utilize Student's mode of communication. (*Id.*)

The February IEP team similarly considered Student's opportunity to "interact with deaf peers" rather than her access to peers utilizing ASL. (FF # 49.) The February IEP team did not consider the differences between CASE and ASL during their meeting. (*Id.*) Despite acknowledging the differences between ASL and total communication, the April IEP team still did not consider whether Student specifically could learn via instruction in CASE. (FF # 76.) The SCO recognizes that finals might not have been an ideal time to get a sense of the programming at Cluster Program. However, during her time at Cluster Program Student found that she could not understand the teachers or interpreters. (FF # 80.) The fact that she could carry on conversations with the interpreters does not mean she was able to understand them during lessons. (*Id.*) Student also had a hard time communicating with the other students because they did not use ASL. (FF # 81.)

The Communication Plan notes that service providers must be proficient in Student's primary communication mode and language and that Student requires instruction via an ASL interpreter or teachers of the deaf who are fluent in ASL. (FF # 110.) However, it then notes that the interpreters at Cluster Program utilize "total communication, including sign language." (FF # 110.) Total communication is not the same as ASL and instruction at Cluster Program is provided in CASE, not ASL. (FF #s 52, 53.) Thus, Student's Communication Plan fails to consider whether Student will have access to instruction in her primary language and mode of communication.

Thus, the SCO finds and concludes that the July IEP does not consider Student's opportunities for direct communication with peers or adults in her primary language and mode of communication, ASL, and was not reasonably calculated to enable Student to receive an educational benefit, violating IDEA's substantive requirements at 34 C.F.R. § 300.324(a)(2)(iv). 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. Peer Group

Parent’s concern is that the July IEP does not adequately consider the availability of a peer group utilizing Student’s language and mode of communication.

As noted above, the Communication Plan considers the availability of other DHH peers, rather than the availability of peers utilizing ASL. (FF # 107.) The July IEP notes that she will have “opportunities to interact with deaf peers” at Cluster Program, based on the opportunities during lunch and down time (FF #s 49, 103.) During the April IEP meeting, Parent raised concerns about the appropriateness of the peer opportunities at Cluster Program after learning that Cluster Program was geared towards students who use CASE. (FF #s 65, 70.) During the meeting, the IEP team noted that Cluster Program had fewer peers using ASL than Charter School but did not discuss how many peers at Cluster Program would be able to communicate directly with Student in ASL. (FF # 76.) In reality, only one student at Cluster Program communicated via ASL at the time. (FF # 57.) At lunch and after school, Student was unable to communicate with anyone. (FF # 82.) The law does not specify what constitutes an adequate peer group in a student’s language and mode of communication. ECEA Rule 4.03(6)(a)(iii). However, the SCO finds that one other student, in another grade, does not constitute a “group” which is naturally defined as more than one.

Thus, the SCO finds and concludes that the July IEP does not consider the availability of a peer group utilizing Student’s language and mode of communication, ASL, and was not reasonably calculated to enable Student to receive an educational benefit, violating ECEA’s substantive requirements at 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).

iii. Annual Goals

Parent’s concern is that the IEP does not include appropriate academic goals for Student. Student’s 2022 IEP includes three math goals, a reading goal and a vocabulary goal. (FF # 21.) During the February IEP team meeting, the IEP team adopted two of the math goals from the 2022 IEP, which was developed at the end of the prior school year. (FF #s 14, 44.) Because District conducted evaluations in this area and the February IEP team discussed Student’s need for math goals, the SCO finds and concludes that the decision to eliminate one math goal was reasonable and that the goals in the July IEP adequately address Student’s math needs, consistent with the requirements of 34 C.F.R. § 300.320(a)(2).

However, District did not evaluate Student’s reading and writing abilities or her communication abilities, and so had no independent knowledge of her need for a reading or vocabulary goal. (FF

#s 31, 32.) The IEP team did not discuss Student's needs in this area and TOD and School Psychologist were unaware that Student was writing at a third-grade level. (FF #s 32, 44.) In actuality, Student could only answer basic reading questions and often missed important features of the text. (FF # 18.) She makes up signs without knowing the meaning of words. (*Id.*) She needed tests read to her, suggesting that she was not reading at grade level. (FF # 23.)

Because the July IEP does not include goals to address Student's reading and vocabulary needs, the SCO finds and concludes that the July IEP was not reasonably calculated to allow Student to be involved in and make progress on her annual goals and in the general education curriculum in this respect, as required by 34 C.F.R. § 300.320(a)(2). 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).

#### iv. Related Services

Parent's concern is that the July IEP does not include either audiology or nursing services.

The 2022 IEP required audiology services twice a year and nursing services as required by her medical condition. (FF # 24.) The 2022 IEP does not specify the quantity or purpose of either. (*Id.*)

Parent's recollection was that the audiology services were to allow them to check for signs of infection around Student's cochlear implants. (FF # 46.) Audiologists generally help manage student equipment. (*Id.*) While they might happen to notice signs of infection, that would not be something they would address. (*Id.*) Student does not utilize any equipment that would normally be monitored by an audiologist and District does not usually include audiology services in IEPs because there is no direct instruction. (*Id.*) Student does not utilize her cochlear implants because they did not work for her. (FF # 15.) Because Student does not utilize any specialized equipment to access her education, the SCO finds that nothing in the Record suggests that Student requires audiology services to access school or benefit from special education.

Student's 2022 IEP included nursing services so that she could access medications as needed to address asthma and allergies. (FF # 45.) Nursing services, as a related service, are not required for the occasional administration of medication. (*Id.*) Thus, the SCO finds that Student did not require nursing services to access school or benefit from special education. However, it is concerning that District did not know why Student required nursing services. (FF # 45.) Although beyond the scope of this investigation, the SCO cautions District that Student may require a health care plan to address her medical needs. (*Id.*)

Because Student did not require audiology or nursing services to benefit from special education, the SCO finds and concludes that the July IEP was reasonably calculated to allow Student to be involved in the general education setting and/or make progress on her annual goals in this respect, consistent with 34 C.F.R. § 300.320(a)(4).

**Conclusion to Allegation No. 3: 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 Parent of all the educational options available to Student, in violation of ECEA Rule 4.03(6)(a)(ii). As a result, District failed to develop an IEP that would have educated Student in her LRE from April 2023 to present, in violation of 34 C.F.R. § 300.114. These violations resulted in a denial of FAPE.**

Parent'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.

#### **A. 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.*

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.

### **B. District’s Continuum of Placements**

In this case, District considered three placement options for Student: enrollment in general education with support from teachers of the deaf and interpreters, Cluster Program and Residential School. (FF #s 47, 109.) The July IEP did not consider the advantages or disadvantages of any alternative placements. (FF # 104.) District initially would not consider Charter School because they do not have a contract with them. (FF # 48.) To date, District maintains that they

cannot place Student, or any students, at Charter School because there is no mechanism to purchase services at Charter School. (FF #s 64, 87, 105.)

The SCO acknowledges that Charter School's standard contract indicates that Charter School is a school of choice. (FF # 63.) However, Charter School currently enrolls students who have been placed by eleven different school districts. (FF # 62.) The SCO is unsure why District has not been able to reach a similar arrangement with Charter School. However, Charter School is a public school. (FF # 59.) The SCO finds that there is nothing that would remove Charter School from the general requirement to make arrangements with public institutions as necessary to educate students in their LRE. 34 C.F.R. § 300.118. Further, the SCO reminds District that when two procedural requirements are in tension, districts should choose the course of action "which promotes the purposes of the IDEA and is least likely to result in a denial of FAPE." *Doug C. v. Hawaii Department of Education*, 720 F.3d 1038, 1046 (9<sup>th</sup> Cir. 2013) (holding that a district denied FAPE to a student when they held an IEP meeting without the parent in order to comply with the annual review requirement.)

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).

### **C. Student's LRE**

As explained in the conclusion to Allegation No. 2, the July IEP did not appropriately consider Student's communication needs, need for a peer group in her mode of communication, or her academic needs. These considerations are critical for determining the LRE of DHH students. *Deaf Child Bill of Rights*.

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*. Cluster Program was District's offer of FAPE because Parent declined to send Student to Residential School (FF # 90.) However, Parent preference cannot be the predominant factor in a placement decision. *Letter to Burton*, 17 IDELR 1182 (OSERS 1991).

Further, cost can only be considered when choosing between two *appropriate* placements. ECEA Rule 4.03(8)(c) (*emphasis added*.) Cluster Program and Charter School are very different programs with different services and different access to general education. (FF #s 51-62.) Thus, the IEP team here needed to determine which of the two programs was appropriate for Student, which would have made considerations of cost irrelevant.

By refusing to consider a full range of potential placements, District failed to make an individualized determination about Student's LRE based on her unique needs. Because District did not make an individualized determination about Student's placement or consider her unique needs, the SCO finds and concludes that District failed to develop an IEP that included placement of Student in her LRE from April 2023 to present, in violation of 34 C.F.R. § 300.114.

#### **D. 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 (10<sup>th</sup> Cir. 2008).

Here, District failed to consider Student's unique communication needs and her need for peer group utilizing her mode of communication, resulting in an IEP that was substantively inappropriate, as indicated in the conclusion to Allegation No. 2. Because District did not appropriately consider those factors, they failed to make an individualized determination about Student's LRE. Educating Student in an inappropriate placement, as proposed by the July IEP, would have impeded Student's right to a FAPE and resulted in a deprivation of educational benefit. However, in this case Student only attended District's proposed placement for four days before the 2022-2023 school year ended. (FF # 80.) Still, District's refusal to consider Charter School or otherwise address Parent's concerns about the appropriateness of the July IEP significantly impeded her ability to participate in the decision-making process, resulting in a denial of FAPE.

**Conclusion to Allegation No. 4: District failed to conduct an appropriate evaluation of Student, in violation of 34 C.F.R. §§ 300.304, 300.305. These violations resulted in a denial of FAPE.**

Parent's concern is that District did not adequately assess Student's communication abilities or review existing records from State School.

The IDEA requires an evaluation to assess students "in all areas related to the suspected disability." 34 C.F.R. § 300.304(c)(4). Evaluations must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the disability category with which the child has been identified. 34 C.F.R. § 300.304(c)(6). The evaluation also must gather all relevant information that may assist in determining "the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum." 34 C.F.R. § 300.304(b)(1)(ii). As part of an evaluation, districts must also review any existing evaluation data on the child. 34 C.F.R. § 300.305(a)(1).



### **A. Evaluation of Communication Status**

Here, District agreed to evaluate Student's cognitive, communication, social and emotional and academic abilities. (FF # 27.) In actuality, District conducted a cognitive screener, one assessment of Student's math abilities and had Parent rate Student's social and emotional status. (FF #s 30, 32, 33.) Although they were proposing to change Student's placement from a separate school to general education and her method of instruction from ASL to CASE, District did not assess Student's communication abilities. (FF # 31.) Parent may not have had any concerns, but that did not mean Student had the ability to access instruction through CASE or an interpreter. (FF #s 31, 53.) For instance, Student's reliance on known signers suggests that she did not have a clear command of ASL, which would further hinder her ability to code switch between ASL and CASE. (FF #s 7, 20.) Sustaining attention to an interpreter is also different than attending to direct instruction in ASL. (FF # 55.) Despite Parent's rating scale indicating concerns with attention, District did not evaluate her ability to sustain attention to an interpreter. (FF # 33.)

For these reasons, the SCO finds and concludes that District's evaluation of Student's communication abilities was not sufficiently comprehensive to assist in determining her need for specially designed instruction or additional accommodations to support enrollment in general education, in violation of 34 C.F.R. § 300.304.

### **B. Review of Existing Data**

Despite repeated requests, District never received evaluation reports or progress monitoring data from State School. (FF # 30.) The SCO finds that District could not compel State School to produce additional records. However, the 2022 IEP included reading, vocabulary and math goals and indicated Student was two grade-levels behind in writing. (FF #s 18, 21.) Student's scores on district assessments while at State School did not necessarily indicate performance at grade level if Student received her accommodations like having the tests signed to her. (FF # 16, 23.) Thus, the SCO finds that District did not consider evidence in the 2022 IEP that Student was not reading at grade level and struggled with vocabulary. (FF # 18.) TOD did not realize that Student was writing at a third-grade level. (FF # 32.)

For all of these reasons, the SCO finds and concludes that District's evaluation of Student did not adequately consider the existing data on Student to determine her need for specially designed instruction or accommodations to support her access to the general education curriculum, in violation of 34 C.F.R. § 300.305(a)(1).

### **C. 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).

In this case, District relied on the Evaluation to recommend a significant change of placement from a separate school to enrollment in a general education setting and instruction through CASE rather than ASL. (FF #s 51-58.) Before making this recommendation, the IEP team did not consider the difference between CASE and ASL or Student's ability to learn in CASE. (FF # 49.) In fact, having not evaluated Student's communication abilities, there is no way they could have. (FF # 31.) The SCO, in consultation with CDE Content Specialist 1, finds that District did not have the necessary information to determine if Student could learn in a total communication model or determine what accommodations she would need to access the general education setting. (FF #s 53-55.) District's failure to consider the prior information about Student's reading and vocabulary difficulties resulted in District's removal of those goals. (FF # 101.) As such, the SCO finds and concludes that District's failure to conduct an appropriate evaluation of Student impeded Student's right to a FAPE.

**Conclusion to Allegation No. 5: District timely provided a copy of Student's IEP to Parent, consistent with 34 C.F.R. § 300.322(f). No IDEA violation occurred.**

Parent's concern is that she did not receive a copy of Student's IEP until July 2023.

The IDEA requires school districts to provide parents a copy of their child's IEP at no cost. 34 C.F.R. § 300.322(f). Providing a copy of the IEP is essential to a parent's ability to participate in the development and enforcement of their child's IEP. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017). The IDEA does not, however, specify that the IEP be provided within a certain timeframe. *See id.*

In this case, District provided Parent with draft IEPs on February 23 and March 27, 2023. (FF #s 41, 67.) District did not have a final IEP until after the April 25 IEP team meeting when District determined that Cluster Program was Student's LRE. District did not provide Parent with a final IEP until July 25, 2023. (FF # 67.) Thus, the SCO finds that District failed to provide Parent with a copy of Student's IEP for three months, only one of which was during the school year. Prior to receiving the final IEP, Parent received two draft IEPs and two PWNs. (FF #s 41, 67, 77, 78, 89, 90.) During this time, Parent and District were engaged in an ongoing dispute over Student's access to FAPE, particularly Student's placement and LRE. (FF #s 66, 76, 77, 88, 93.) The two PWNs issued during that time summarized the IEP team discussions and made clear that District's offer of FAPE was placement at Cluster Program. (FF #s 77, 78, 90.)

The IDEA does not require an IEP to be provided within a specific timeframe. In this case, the SCO finds District's delay of one month during a nine-month school year to be reasonable. However, if not for summer break, a delay of three months may have been found to be unreasonable. *See, e.g., St. Vrain Valley Sch. Dist. RE-1J*, 122 LRP 12570 (SEA CO 2/15/22) (finding a two-month delay a violation of the IDEA); *Durango Sch. Dist. 9-R*, 122 LRP 13564 (SEA CO 2/4/22) (finding a ten-month delay a violation of the IDEA). Thus, the SCO finds and concludes that District timely provided Parent with a copy of Student's IEP and no violation of 34 C.F.R. § 300.322(f) occurred.

**Compensatory Services: These violations resulted in a need for compensatory services.**

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

Here, District failed to make an offer of FAPE to Student from November 30, 2022 until April 25, 2023, or five months. During that time, the 2022 IEP included full-time placement in a separate school for DHH students. (FF # 24, 26.) Instead, Student was receiving no services for five months.

From April 25 until May 19, or almost four weeks, Student did not attend Cluster Program due to difficulties with enrollment and transportation. (FF # 79.) The enrollment process is beyond District’s control and some amount of delay would have been expected with any out of district placement. The SCO finds that the one-week transportation delay was reasonable under the circumstances. (FF # 79.) Thus, the SCO finds and concludes that Student only missed out on an additional two weeks of services during this time.

Parent has since kept Student home for the 2023-2024 school year, believing that Cluster Program was not appropriate. (FF # 113.) Parent has valid concerns about the appropriateness of District’s offer of FAPE. However, Student is not receiving any services at home, where she is also unable to communicate directly with others who are equally fluent in ASL. (FF # 114.) Had Student attended Cluster Program, she would have had some direct instruction that might have partially mitigated the District’s failure to develop an appropriate IEP. Because Parent has not made Student available for the services District is offering, the SCO finds and concludes that Parent and District share responsibility for Student’s deprivation of educational benefit from August 2023 to present. This means that District is only responsible for partially compensating Student for the lack of direct instruction or opportunities for direct communication in ASL for that four-month period.

She was already behind grade level and now has received no academic instruction during that time. (FF #s 16, 18, 19, 20.) She video chats with friends when she can but has mostly been limited to signing with Parent and sibling, neither of whom is fluent in ASL. (FF # 114.) Thus, she is not learning new signs and Parent believes her signing abilities are regressing. (*Id.*) All told, Student has been out of school since October 2022, or almost 15 months. For the reasons described above, the SCO finds that District is only responsible for compensating Student for 7.5 months of schooling. To remedy this violation, the SCO, in consultation with CDE Content Specialist 1, finds that Student is entitled to 1000 hours of compensatory services in academics and ASL language development, as well as opportunities for direct engagement with Deaf peers who are fluent in ASL. The SCO also recognizes that 1000 hours is likely to amount to over 20 hours per week of

compensatory services, which is neither logistically feasible nor educationally appropriate for a student enrolled in full-time schooling. As such, the award will be adjusted accordingly at the point Student is placed in an appropriate program, as defined in the Remedies.

The SCO also notes that nothing in the record supports Student requiring a residential setting and that a student can only be placed in such a setting if they cannot obtain an educational benefit in a less restrictive setting. *See, e.g., L.H. v. Monroe-Woodbury Cent. Sch. Dist.*, 51 IDELR 91 (2d Cir. 2008, unpublished), cert. denied, 110 LRP 792, 129 S. Ct. 1584 (U.S. 2009) (holding that because a student with an emotional disturbance was making progress in a therapeutic day program, her parents could not establish a need for a residential placement).

**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. Comparable Services and Timely IEP Development**

The SCO finds and concludes that District’s failure to make an offer of comparable services for Student or to timely develop an IEP after determining eligibility is systemic in nature. District did not believe it was obligated to provide Student with an offer of FAPE because she did not enroll in her neighborhood school. (FF # 12.) District has since developed new procedures for students who are not currently attending a District school. (FF # 115.) This new procedure similarly does not acknowledge a need to offer comparable services to students who are not attending their home school. (FF # 117.) Other students may transfer to District from a placement in a specialized program like a separate school or a facility school. District’s current procedure does not adequately address what to do if it is not safe and appropriate for the student to attend their neighborhood school. As a result, other such student may also go weeks or months without services if District does not consider them “enrolled.” Thus, the SCO will order remedies designed to ensure that District has an appropriate process in such a situation.

#### **B. Substantive IEP Development**

The SCO also finds that the failure to appropriately consider Student’s communication needs or her need for an appropriate peer group is systemic in nature and likely to impact other students in District. Even with the involvement of assistant directors and Director, District has consistently

maintained that Cluster Program constitutes an offer of FAPE for Student, without considering her access to direct instruction or communication in her primary language or mode of communication. (FF #s 76, 77, 86, 90, 105, 107.) Despite acknowledging that ASL is Student's primary language and only mode of communication, the Communication Plan and July IEP regularly reference her access to DHH peers or sign language, without considering her access to peers or adults fluent in ASL. (FF #s 96-111.) This continued despite Student, Parent and her advocates specifically raising concerns about Student's access to instruction and peers in ASL. (FF #s 84, 86, 88.) Thus, District may also be developing substantively inappropriate IEPs for other DHH students in District.

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.

### **C. 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 DHH students in District. District continues to maintain that it cannot consider Charter School as a potential placement. (FF #s 64, 87, 105.) As a result, District likely has not considered a full continuum of potential placements for other DHH students and may not be educating them in their LRE. Other students with unique needs that cannot be met by the established continuum also may not be 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 IDEA's LRE requirements and to ensure the future provision of appropriate services to all IDEA-eligible students in District.

### **D. Other Violations**

Nothing in the Record suggests that the other violations—failing to convene an appropriate IEP team or conduct a comprehensive evaluation—are systemic in nature. Instead, these violations are likely the result of District's lack of adequate procedures for unusual transfers and lack of experience dealing with profoundly Deaf students whose primary language is ASL, both of which have already been addressed above and through District's creation of a new procedure. (FF #s 95, 115-117.) Thus, the SCO finds that these violations are not systemic as they are unlikely to impact the future provision of services to IDEA-eligible students in District.

## REMEDIES

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

- a. Failing to make an offer of FAPE and provide special education and related services in accordance with an IEP, in violation of 34 C.F.R. § 300.323;
- b. Failing to develop an IEP in a timely fashion or with an appropriate IEP team, in violation of 34 C.F.R. §§300.306, 300. 321(a)(2), 300.323(c);
- c. Failing to include appropriate annual goals, in violation of 34 C.F.R. § 300.320(a)(2);
- d. Failing to consider Student’s 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);
- e. Failing 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);
- f. Failing to offer a full continuum of alternative placements, in violation of 34 C.F.R. § 300.115;
- g. Failing to provide an explanation of all educational options available to Student, in violation of ECEA Rule 4.03(6)(a)(ii);
- h. Failing to educate Student in her LRE, in violation of 34 C.F.R. § 300.114.
- i. Failing to conduct a comprehensive evaluation of Student, in violation of 34 C.F.R. §§ 300.304, 300.305; and

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

### **1. Corrective Action Plan**

- a. By **Thursday, February 29, 2024**, 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 Director, Assistant Directors 1 and 2, TOD and all teachers of the deaf in District must review this decision, as well as the requirements of 34 C.F.R. §§ 300.304, 300.305, 300.306, 300.320(a), 300.114, 300.115, 300.321(a), 300.323, and 300.324(a)(2)(iv) and ECEA Rule 4.03(6). This review must occur no later than **Wednesday, March 6, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, March 8, 2024**.

## **3. Training**

- a. Director, all assistant directors, and all special education staff supporting or evaluating DHH students, including teachers of the Deaf, educational interpreters, speech and language pathologists and school psychologists must attend and complete training provided by CDE on evaluation of DHH students and 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. §§ 300.304, 300.305, 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 **Friday, April 5, 2024**. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **April 12, 2024**.

## **4. Procedures**

- a. By **Friday, March 15, 2024**, District must submit updated written guidance to ensure compliance with 34 C.F.R. § 300.323.
  - i. At a minimum, the updated procedure must offer clear guidance on offering comparable services when students transfer into District during the school year with IEPs specifying placements outside the general education setting.

- ii. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- iii. District must ensure that all special education providers and administrators in District receive a copy of the procedure no later than **Friday, April 12, 2024**. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Friday, April 19, 2024**.

## **5. Reevaluation and Review of IEP**

- a. District must provide Parent with consent for reevaluation of Student by **Wednesday, February 21, 2024**. The reevaluation may include a review of records but must include a comprehensive evaluation of Student's current primary mode of communication (including her ability to code switch and comprehend lessons via CASE), academic (including reading, writing and math and her ability to sustain attention to an interpreter) and social emotional abilities (including a formal Student interview). Only accommodations allowed by the test protocol may be provided for academic tests, and all accommodations provided must be listed in the evaluation report.
  - i. The reevaluation must be completed by individuals fluent in ASL, and not through the use of interpreters. The assessment of Student's communication abilities must be completed by a highly qualified individual who is both qualified to administer the assessment and who is able to directly communicate with the student using her primary mode of communication as noted in the IEP, and not through the use of an interpreter.
  - ii. By **Wednesday, February 21, 2024**, District must provide Parent and CDE with the names and qualifications of all proposed evaluators. A determination that the evaluator(s) meet the above requirements rests solely with CDE. If District and CDE are unable to reach agreement on qualified evaluators by **Wednesday, March 6, 2024**, CDE shall identify any additional necessary evaluators by Friday, March 15, 2024.
  - iii. If Parent refuses to sign consent for evaluation within 30 days of receipt, District will be excused from conducting the reevaluation, provided District diligently attempts to resolve disagreements about the evaluator or scope of the evaluation and secure signatures and documents such efforts. A determination that District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student, rests



solely with CDE. Regardless, District must still convene Student's IEP team in accordance with 5(b) below.

- b. District must convene Student's IEP Team, at a mutually agreeable date and time, no later than **Thursday, May 23, 2024**. In consideration of Student's communication needs and current abilities, Student's IEP Team must review and, as necessary, revise Student's IEP and communication plan, in accordance with 34 C.F.R. §§ 300.114, 300.115, 300.320, 300.324 and ECEA Rule 4.03(6)(a)(ii) to address Student's unique needs and the concerns identified in this Decision.
  - i. If District is considering placement in a general education setting, a general education teacher who would be responsible for implementing Student's IEP must be in attendance.
  - ii. At least one of the evaluators identified in Remedy No. 5(a) must attend the IEP meeting. If no one evaluator is capable of interpreting the results of all the evaluations, multiple evaluators must attend.
- c. By **Friday, May 31, 2024**, District must provide copies of the signed consent for evaluation, evaluation report, notice of IEP meeting and finalized IEP and communication plan, including attendance records from the IEP team meeting to the CDE Special Education Monitoring and Technical Assistance Consultant.

## **6. Compensatory Education Services – Academics and Communication**

- a. Student shall receive **1000 hours of direct, specialized instruction**. This instruction must be provided by an appropriately licensed teacher(s) of the deaf who is fluent in ASL and also appropriately qualified in the relevant content areas. These services must target ASL language development, all core content areas, math, English language arts, science and social studies, and any specific deficits identified in the evaluation performed pursuant to Remedy No. 5(a).
- b. No later than **Friday, February 23, 2024**, District shall identify an appropriately qualified teacher(s) of the deaf. A determination that the teacher(s) is appropriately qualified rests solely with the CDE. If District cannot identify appropriate individuals for any or all subjects by February 23, 2024, CDE will identify a teacher(s).
- c. Once an appropriate teacher(s) has been identified, Student shall receive at least 20 hours per week of direct compensatory instruction. At least 120 hours of this direct instruction will be provided during the summer of 2024. However, if District places Student in an appropriate placement where she can receive full direct (meaning not through an interpreter) access to all instruction in ASL, with the

exception of English instruction which must be appropriately bridged from ASL to English, any remaining compensatory services, except the summer hours and any rescheduled services required pursuant to Remedy No. 6(g), will be excused. A determination of whether Student has been offered an appropriate placement, as well as the amount of compensatory services remaining rests solely with CDE.

- d. **By Friday, March 15, 2024**, District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Tuesday, March 20, 2024**. If District and Parent cannot agree to a schedule by March 15, 2024, the CDE will determine the schedule for compensatory services by **March 29, 2024**.
  - i. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parent may opt out of some or all of the compensatory services.
- e. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- g. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance her toward her IEP goals

and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

**7. Compensatory Education Services – Communication and Access to Peers**

- a. District shall **pay up to \$600 for Student to participate in summer programming where Student will have direct access to peers whose primary mode of communication is ASL** during the summer of 2024.
  - i. The parties must notify CDE of a mutually agreed upon summer program by **Tuesday, March 20, 2024**. If the parties are unable to agree to a program by that time, CDE shall determine an appropriate program by **March 29, 2024**.
  - ii. District shall pay the program or related expenses directly for Student's enrollment.
  - iii. Participation in the summer program must occur prior to August 31, 2024.
  - iv. If Student or Parent chooses not to enroll in the summer programming, District shall be excused from paying for programming.
- b. District shall provide all necessary transportation so Student can participate in this programming.
- c. 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 Parent's choice not to participate in any programs by **April 30, 2024**.
- d. 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, including the compensatory services outlined in Remedy No. 6. 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.

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 29<sup>th</sup> day of January, 2024.



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Rachel Dore  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-17

- Exhibit 1: State School Documents
- Exhibit 2: District Documents
- Exhibit 3: Other Documents

### Response, pages 1-29

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: PWNs
- Exhibit D: Meeting Documentation
- Exhibit E: None
- Exhibit F: Attend
- Exhibit G: None
- Exhibit H: Calendar
- Exhibit I: District Policies
- Exhibit J: Correspondence
- Exhibit K: None
- Exhibit L: Verification of Delivery
- Exhibit M: Additional Documentation
- Exhibit N: Additional Documentation

### Reply, page 1

### Telephone Interviews

- Parent: December 11, 2023
- School Psychologist: December 12, 2023
- Assistant Director 2: December 12, 2023
- Director: December 12, 2023
- TOD: December 12, 2023
- Cluster Coordinator: December 12, 2023
- Charter Director: December 15, 2023