

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

**State-Level Complaint 2024:585
Adams County School District 27J**

DECISION

INTRODUCTION

On August 9, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Adams County School District 27J (“District”). The Complaint was filed on behalf of all sixth graders who received instruction from a certain teacher (“Teacher 1”) at a District middle school (“School”). The Colorado Department of Education (“CDE”) determined that the Complaint identified an allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. On August 19, 2024, Parent submitted another state-level complaint with Student-specific allegations, which the CDE determined were also subject to its jurisdiction under the IDEA.²

On October 8, 2024, the CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after August 9, 2023. Information prior to August 9, 2023 may be considered to fully investigate all allegations.

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

² Although the allegations have been consolidated into a single investigation, because Parent submitted two complaints (the original complaint and then the additional allegations), which the District addressed in two responses, followed by two replies from Parent, this Decision cites the original complaint and related briefing as *Complaint A, Response A, and Reply A*, and the second complaint and briefing as *Complaint B, Response B, and Reply B*.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. District did not ensure that Teacher 1, who implemented services required by Student’s IEP and the IEPs of other sixth-grade students at School, possessed the required certifications and licenses during the 2023-2024 academic year, as required by 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.
2. District did not fully implement Student’s Individualized Education Program (“IEP”) because it:
 - a. Did not monitor Student’s progress on annual IEP goals consistent with the IEP, from August 19, 2023 through May 23, 2024, as required by 34 C.F.R. §§ 300.320(a)(3)(i), 300.323(c).
 - b. Did not provide Parent with periodic reports on progress consistent with the IEP, from August 19, 2023 through May 23, 2024, as required by 34 C.F.R. §§ 300.320(a)(3)(ii), 300.323(c).
3. District did not allow Parent to participate when determining Student did not need Extended School Year (“ESY”) services on or about May 31, 2024, as required by 34 C.F.R. §§ 300.106, 300.321, and 300.322(a).

FINDINGS OF FACT

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

A. Systemic Allegation: Teacher 1’s Credentials

1. Parent filed two complaints, which were consolidated into a single investigation that is resolved by this Decision. *See Complaint A, Complaint B.*
2. The first complaint concerns all sixth graders who received specialized instruction from Teacher 1 at School. *Complaint A*, p. 1. Parent is concerned that Teacher 1 did not possess a special education endorsement, which is a teaching credential issued by the CDE and required to teach as a special education teacher in Colorado. *Id.*
3. The District acknowledges, and the Record reflects, that Teacher 1 worked as a special education teacher at School for the 2023-2024 school year even though she did not obtain the required endorsement until May 21, 2024, the second-to-last day of the school year.

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

Interviews with Special Education Director (“Director”), Response, p. 2; Exhibit E, p. 11; CDE Exhibit 1, p. 1.

4. Although she lacked the endorsement, Teacher 1 has had a teacher’s license with a K-6 endorsement since 2011, she has a master’s degree in education, she has met the requirements to provide literacy instruction and reading intervention under the Colorado READ Act⁴ since 2022, and prior to the 2023-2024 school year she already met all the requirements for the special education endorsement except for completion of one subject-area assessment. *Interview with Teacher 1; Response A, p. 2.; see Colorado Online Licensing Lookup.*⁵ She passed that assessment midway through the school year, just two weeks after learning that she needed to take it, although she did not receive the endorsement until the end of the school year. *Interview with Teacher 1; Response A, p. 2.*
5. Because it is undisputed that Teacher 1 did not have the required credentials to act as a special education teacher in the 2023-2024 school year, the state complaints officer (“SCO”) must consider the special education services that she provided to students on behalf of the District. *See Complaint A, p. 6; Response A, p. 3.*
6. The SCO has reviewed the IEPs in effect for each student during the 2023-2024 school year as well as each student’s progress reports and attendance records. *See Exhibits C-1 through C-20.*
7. For the 2023-2024 school year, Teacher 1 provided instruction in literacy to twenty sixth-grade students whose IEPs had literacy goals and required specialized instruction in literacy. *Interview with Teacher 1; Response A, p. 2; see Exhibit A; Exhibits C-1 through C-20; Exhibit C-23.*
8. By and large, the students did not make progress on their literacy goals over the course of the year:
 - a. Six students did not make progress on their literacy goals. *See Exhibits C-1, p. 6; C-8, p. 6; C-6, pp. 5-6, 26; C-11, pp. 6-7; C-12, pp. 5, 15-16, 22.* Of those, one student’s lack of progress was attributable to her non-attendance. *See Exhibit C-20, pp. 26-28, 38-41.*
 - b. Ten students had mixed progress—they made progress on one or more of their literacy goals, but for other goals either did not make progress or the progress could not be determined due to reporting that was not consistent with the goal metrics. *See Exhibits C-2, pp. 12, 22; C-3, pp. 5-6, 22; C-4, pp. 47, 62; C-5, pp. 8-9,*

⁴ C.R.S. § 22-7-1201. The READ Act requires all K-3 teachers and 4-12 reading interventionists to complete evidence-based training in teaching reading. *See generally* CDE, *Colorado READ Act* (Sept. 23, 2024), <https://www.cde.state.co.us/coloradoliteracy>.

⁵ Available at <https://cool.randasolutions.com/Public/Search>.

11, 23-24; C-7, pp. 6-8, 28-31; C-10, pp. 17, 19-20, 26; C-15, pp. 34-36, 44-45; C-17, pp. 13, 34-35; C-18, pp. 16-17, 48-49; C-19, pp. 13, 16, 36-38.

- c. Three students did make progress on their literacy goals. *See Exhibits C-9*, pp. 8, 25-26; *C-13*, pp. 31-34; *C-14*, pp. 25-26.
 - d. One student's progress could not be determined because of a lack of information and mismatch between the goal metric and reported data. *See Exhibit C-16*, p. 41.
9. The District has proposed providing compensatory services in literacy to these students. *Exhibit D*. Under the proposed plan, a properly credentialed special education teacher would first ascertain each student's individual literacy goals and needs. *Id.* The teacher would then provide 105 minutes (1 hour and 45 minutes) of instruction each Monday. *Id.* Monday is ordinarily not a school day in the District, because the District has a four-day week. *Id.* Students' progress would be measured throughout the period of compensatory services. *Id.* This instruction would be offered every Monday for the remainder of the school year. *Id.* Because this Decision is issued late in the fall semester, instruction would begin with the spring semester. There are seventeen Mondays in the spring 2024-2025 semester, not including Martin Luther King, Jr. day, President's Day, and spring break. *See Exhibit G*. Therefore, this plan would offer a maximum of 1,785 minutes (29.75 hours) of instruction.
 10. Of the 17 students who did not make progress, 10 students' IEPs required 60 to 120 minutes of specialized instruction, and the remaining 7 required 150 to 240 minutes of specialized instruction. *Exhibit A*. Over the course of the 2023-2024 school year, which was roughly 18 weeks, the former group of students were owed an average of 1,538 minutes (25 hours) of specialized instruction, and the latter group an average of 3,260 minutes (54 hours). *See Exhibit G*.
 11. The District allows a new teacher to provide specialized instruction as a special education teacher without a special education endorsement or authorization, so long as the teacher is in the process of obtaining the endorsement or authorization. *Interview with HR Manager*. A teacher cannot get a contract until they have the proper credentials. *Id.* The District closely tracks each teacher's status in the CDE's system for obtaining an appropriate special education credential; if a teacher's application for the credential is stalled, the District contacts the teacher and the teacher's principal to ensure the teacher completes any necessary steps to keep the application moving toward completion. *Id.* If for any reason it becomes apparent that a teacher no longer has a path toward timely obtaining the required credential, then the District will not allow the teacher to continue in a role requiring the credential. *Id.*

B. Student-Specific Allegations: Progress Monitoring and Reporting, ESY Determination

Background

12. Parent's second complaint concerns her child, Student. *See Complaint B.*
13. Student is a thirteen-year-old girl who attended sixth grade at School in the 2023-2024 school year. *Exhibit AA*, p. 13. She works hard and likes to spend time with her friends, although she is shy in new or unfamiliar situations. *Id.* at p. 25.
14. She is eligible for special education and related services under the category of Speech or Language Impairment. *Id.* at p. 13. Her disability results in deficits in the area of pragmatic language. *Id.* at p. 25. This impacts her ability to access the general education environment due to misinterpretation of adults' instructions and feedback, awkwardness in social situations with her peers, and a reduced ability to advocate effectively for her needs. *Id.* She also needs support with her literacy skills, reading and writing. *Id.*
15. Parent's concerns arise in part from the monitoring and reporting of Student's progress on her two IEP goals, both of which targeted literacy. *Complaint B*, pp. 7-11; *Interview with Parent*. Parent alleges that the District neither monitored nor reported Student's progress on both goals as required by Student's IEP. *Id.* Parent is also concerned that Student's IEP Team determined, without Parent's knowledge or participation, that Student should not receive ESY services for the summer of 2024. *Complaint B*, pp. 18-20.
16. The District, in response, acknowledges that Student's progress was not reported quarterly as required by her IEP. *Response B*, pp. 2-3. It states, however, that Parent was informed of Student's progress via a December 2023 evaluation report, a January 2024 progress report, and a March 2024 progress report. *Id.* The District does not dispute that Student's ESY eligibility for summer 2024 was determined without Parent's participation, but it observes that Student's progress reports showed that she had met her IEP goals. *Id.* at pp. 3-4.

Student's IEP for the 2023-2024 School Year

17. The District convened Student's multidisciplinary team on December 19, 2023 to discuss the results of a recent reevaluation and determine whether Student continued to be eligible for special education. *Exhibit CC*, p. 1.
18. At the meeting, the team was prepared to determine that Student, who was performing well academically, was no longer eligible for special education and related services. *See Exhibit DD*, p. 5; *Exhibit HH*, p. 31; *Reply B*, p. 4; *Interviews with Teacher 1 and Parent*.
19. In support of discontinuing Student's services, Teacher 1, who was Student's case manager, noted that Student had met her two IEP goals, both of which targeted literacy. *Id.* at pp. 11-12.
20. However, Parent noted that Student, who had been eligible under the category of Specific Learning Disability, still encountered challenges due to her difficulties with speech and language. *See Interviews with Teacher 1, Director, and Parent; Exhibit BB*, p. 15. Parent asked

the District to maintain Student's eligibility for the time being as well as to administer additional assessments to identify any speech and language needs. *Id.*

21. The District agreed to postpone the eligibility determination and any revisions to Student's IEP until the new assessments had been conducted. *Id.*
22. Because Teacher 1 had determined that Student met her two IEP goals in December 2023, Teacher 1's understanding was that Student did not have any IEP goals that needed to be monitored or reported for the remainder of the 2023-2024 school year. *Interview with Teacher 1.* However, the District acknowledges that Student's January 2023 IEP, including the goals and their monitoring and reporting requirements, remained in effect through the entire year. *Response*, pp. 2-3.

Progress Monitoring for Goal 1 (Affixes)

23. Goal 1 on Student's IEP was: "By January of 2024, [Student] will identify and define affixes (prefixes and suffixes) and root words in multisyllabic words including domain specific vocabulary with 85% accuracy on 3 out of 4 trials." *Exhibit AA*, p. 6.
24. Student's baseline data point was: "[Student] is able to match words to definitions. She is not able to define words when given an unfamiliar word." *Id.*
25. Student's progress on this goal was to be reported quarterly. *Id.*
26. To monitor Student's progress, Teacher 1 administered worksheets assessing Student's ability to define words based on their affixes, to choose affixes to achieve a correct meaning, and to define affixes. *Interview with Teacher 1; see Exhibit FF*, pp. 15-21.
27. The Record contains pertinent worksheets dated November 16, 2023, December 8, 2023, December 13, 2023, and December 21, 2023. *Exhibit FF*, pp. 15-21.
28. Student scored above 85% on all four worksheets. *See id.*
29. Consistent with this, Teacher 1 reported that Student had met her goal in Student's December 11, 2023 evaluation report. *Exhibit BB*, p. 11. This was the first report of Student's progress on Goal 1. *See Exhibit FF; accord Response B*, p. 3.
30. Although Teacher 1 provided additional progress reports in January and March 2024, they did not include any new information; rather, they each repeated that Student's scores across four trials showed that she had met her goal. *See Exhibit FF*, p. 1; *Exhibit 19*, p. 3. There was no progress report for the end of the spring semester. *See Exhibit FF; Exhibit AA*, p. 6.
31. In the spring semester, Teacher 1 continued to instruct Student on affixes. *Interview with Teacher 1.* She did not monitor or report Student's progress, however, because Student had met Goal 1 in December and no new goal had been set to replace it. *Id.*

32. Under District policy, monitoring and reporting should have continued through the spring 2024 semester in accordance with the January 2023 IEP. *Interview with Director.*
33. Based on these facts, the SCO finds that Student’s Goal 1 was not monitored throughout the 2023-2024 school year as required by her IEP, and her progress was not reported quarterly throughout the year as required by her IEP.

Progress Monitoring for Goal 2 (Writing)

34. Goal 2 on Student’s IEP identified her “area of need” as “formatting of writing,” and it was: “By January of 2024, [Student] will use a graphic organizer⁶ to create a written composition that contains 3-4 paragraphs of at least 3-5 sentences each, an introduction, 3 supporting points, conclusion. [Student] will demonstrate this ability through classroom assignments.” *Exhibit AA*, p. 7.
35. Student’s baseline data point was not consistent with the goal task because it said that she could *already* produce a composition using a graphic organizer but needed assistance with transferring her work from the organizer into a regular written document. *See id.* Specifically, it stated that “[Student] *is able* to produce information in a graphic organizer. She needs support to transition the information to a writing piece.” *Id.* (emphasis added).
36. Student’s progress was to be reported quarterly. *Id.*
37. To monitor Student’s progress, Teacher 1 had Student use a graphic organizer to create a written composition. *See Exhibit FF*, pp. 13-14. Because one of Student’s parents helped her with the composition, Teacher 1 repeated the task with a different prompt. *Interviews with Teacher 1 and Parent; Response*, p. 3; *Complaint*, p. 7; *see Exhibit FF*, pp. 22-27. Student was not asked to transfer the composition from the graphic organizer to a document. *See Response*, p. 3; *Exhibit FF*, pp. 22-27; *Exhibit 36* at 2:00 to 7:30; *Interview with Parent*. Student’s progress was not formally monitored with any additional tasks or exercises. *Interviews with Teacher 1 and Parent; see Response*, p. 3; *Exhibit FF*, pp. 22-27; *Exhibit 36* at 2:00 to 7:30.
38. At the June 2024 IEP meeting, when Student’s IEP was reviewed and revised, Director (who attended the meeting) agreed with Parent that Goal 2 had not been properly monitored in the 2023-2024 school year, because Student’s ability to transfer her writing from the graphic organizer to a document was never assessed. *Exhibit 36* at 2:00 to 7:30.

⁶ A “graphic organizer” is a worksheet divided into prompts to write each component of an essay. *Interview with Teacher 1; see Exhibit FF*, pp. 22-27. For example, the worksheet begins with prompts for an “Introduction” to the essay, with the prompts being “Attention Getter – Grab your reader’s attention on the topic in a creative and engaging way – 1-2 sentences,” then “Background Information – Transition into brief background on the topic – 3-4 sentences,” and finally “Claim/Thesis – Write your thesis statement at the end of your introduction,” with similar prompts for the body paragraphs and conclusion. *See, e.g., Exhibit FF*, pp. 22-27. From an adult’s view, the completed graphic organizer can simply be typed into a document, but young students have trouble with this step. *Interview with Teacher 1; see Exhibit AA*, p. 7.

39. As with Goal 1, Teacher 1 reported that Student had met Goal 2 in the December 11, 2023 evaluation report and repeated that statement in progress reports in January and March 2024. See *Exhibit FF*, p. 1; *Exhibit 19*, pp. 3-4. There was no report at the end of the spring semester. See *Exhibit FF; AA*, p. 7.
40. Based on these facts, the SCO finds that Student’s Goal 2 was not monitored in the 2023-2024 school year as required by her IEP, and her progress on Goal 2 was not reported quarterly as required by her IEP.

ESY Determination

41. Student did not receive ESY services following the 2023-2024 school year. *Response B*, pp. 3-4; *Interview with Teacher 1*.
42. The District and Teacher 1 acknowledge that there was no discussion of ESY at any point in the 2023-2024 school year. *Id.*
43. The District is correct that the Record does not show that Student required ESY services to prevent regression; however, Parent is also correct that the lack of new goals, progress monitoring, and progress reporting has resulted in a lack of information on this point. See, e.g., *Exhibit AA*, pp. 6-7; *Exhibit FF*, p. 1.
44. Although the District did not properly monitor Student’s progress on her IEP goals, her report card shows that she achieved “substantial performance” in the fall semester and “adequate performance” in the spring semester in her general education Language and Literature class. *Exhibits C-21*, p. 3; *FF*, p. 2.
45. Under District policy, IEP Teams must determine whether a student is eligible for ESY services each school year. *Interview with Director*. Teams are encouraged to make these determinations by April 15, because individualized ESY services are developed for each student, although sometimes there is a delay and the individualized services are developed on a shorter timeline. *Interview with Director*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not ensure that Teacher 1 had a special education endorsement in the 2023-2024 school year as required by 34 C.F.R. §§ 300.156, 300.207, and ECEA Rule 3.04. This resulted in a denial of FAPE.

Parent’s first concern is that Teacher 1 did not have the credentials required to provide specialized instruction to students.

A. Legal Requirements

The legal requirements for staff licensure provide a minimum floor of staff qualifications necessary to provide specialized instruction. The IDEA requires the CDE to “establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.” 34 C.F.R. § 300.156(a). These qualifications “must ensure that each person employed as a public school special education teacher . . . [h]as obtained full State certification as a special education teacher.” *Id.* § 300.156(c).

The Rules for the ECEA provide that “[a]ll personnel providing special education services to children with disabilities shall be qualified,” and “[a]ll special education teachers shall hold Colorado’s teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04. A special education teacher may also teach with a Special Education Temporary Authorization. ECEA Rule 3.04(3); Rules for the Colorado Licensing Act, Rule 4.13. A failure to staff an appropriately licensed teacher to provide specialized instruction required by students’ IEPs results in a failure to implement the IEPs. *Academy School District 20 (“ASD20”),* 124 LRP 34397 (SEA CO 3/22/14); *Denver Public Schools,* 122 LRP 39748 (SEA CO 9/30/22).

A school district must provide the special education and related services required by a student’s IEP. 34 C.F.R. § 300.323(d).

B. Teacher 1’s Credentials

Teacher 1 provided literacy instruction to twenty students (including Parent’s child, Student) in accordance with their IEPs’ requirements that they receive specialized instruction. (FF # 7.) However, Teacher 1 did not possess an endorsement authorizing her to provide instruction as a special education teacher. (FF # 3.) Teacher 1 could not, therefore, legally teach as a special education teacher. ECEA Rule 3.04(1)(a)(i). Because Teacher 1 did not possess the required endorsement, she could not fulfill the District’s duty to provide specialized instruction as required by the students’ IEPs. *Id.*; *ASD20,* 124 LRP 34397.

Accordingly, the SCO finds and concludes that the District did not ensure that Teacher 1 had the required endorsement, in noncompliance with 34 C.F.R. §§ 300.156, 300.207, and ECEA Rule 3.04. Consequently, the District also did not implement the students’ IEPs as required by 34 C.F.R. § 300.323(d) because it did not legally provide the specialized instruction in literacy required by the IEPs.

By not ensuring that Teacher 1 had the required endorsement, the District did not follow the procedural requirements of the IDEA. Further, it did not fully implement the students’ IEPs.

Procedural noncompliance results in a denial of FAPE—allowing remedies such as compensatory services—only if the noncompliance (1) impeded a child’s right to a FAPE, (2) significantly impeded a parent’s opportunity to participate in the decision-making process, or (3) caused a

deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001). Similarly, a lapse in implementing a student’s IEP results in a denial of FAPE only where the lapse results in the omission of a “material,” “essential,” or “significant” provision of a student’s IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19; *see, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003).

Here, Teacher 1’s lack of the required endorsement resulted in a denial of FAPE. The provision in the students’ IEPs that they receive specialized instruction in literacy was material, essential, and significant to both their IEP and their education, and the lapse in providing that instruction constitutes material noncompliance. The lack of specialized instruction deprived the students of an educational benefit to which they had a legal right. For these reasons, the SCO finds and concludes that this noncompliance resulted in a denial of FAPE.

C. Compensatory Services

Compensatory services are an equitable remedy intended to place students in the same position they would have been if not for the noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005); *see Univ. Acad. Charter Sch.*, 70 IDELR 84 (SEA MN 4/18/17) (ordering compensatory services after the district denied students FAPE by failing to provide specialized instruction by licensed special education teachers).

Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of Educ.*, 118 LRP 43765 (SEA CO 6/22/18). Compensatory awards should be guided by the purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of each child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the SCO finds and concludes that an award of compensatory services is appropriate. Progress reporting indicates that all but three Students did not make progress on their 2023-2024 IEP goals in literacy. (FF # 8.) For these Students who did not make progress (“Impacted Students”) and whose IEPs required 150 to 240 minutes of specialized instruction, the SCO will adopt the District’s proposed schedule of compensatory services for 29.75 hours of instruction on the seventeen Mondays in the spring semester. (FF #s 9-10.) This will result in an award of roughly 55% of compensatory time on average. (*See id.*) For the Impacted Students whose IEPs required 60 to 120 minutes of specialized instruction, the SCO will order compensatory instruction every other Monday in the spring semester, which is 14 hours of instruction, again roughly 55% of compensatory time on average. (*See id.*) In making this determination, the SCO has accounted for the benefit of the instruction that Teacher 1 provided, despite her lack of the required credential.

Conclusion to Allegation No. 2: The District did not monitor or report Student’s progress on annual IEP goals as required by her IEP in the 2023-2024 school year, in noncompliance with 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE.

Parent's second concern is that the District did not properly monitor and report Student's progress.

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

Here, as the findings of fact show, the District did not monitor and report Student's progress as required by her IEP. (FF #s 23-40.) For Goal 1, progress was not monitored or reported in the spring semester. (*Id.*) For Goal 2, progress was not properly monitored at all, meaning that the single progress report was inaccurate. (*Id.*) Thus, the SCO finds and concludes that the District did not implement the monitoring and reporting requirements of Student's IEP, in noncompliance with 34 C.F.R. § 300.323(c).

As noted above, a lapse in implementing a student's IEP results in a denial of FAPE only where the lapse results in the omission of a "material," "essential," or "significant" provision of a student's IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19; see, e.g., *Van Duyn*, 502 F.3d at 822; *Neosho R-V Sch. Dist.*, 315 F.3d at 1027.

Because Student's progress for both of her IEP goals was not properly monitored or reported for the entirety of the 2023-2024 school year, the SCO finds and concludes that the lapse was material and resulted in a denial of FAPE. As a remedy, the SCO will order staff to review this Decision, including this discussion of the requirements for monitoring and reporting.

Conclusion to Allegation No. 3: The District did not allow Parent to participate in the determination that Student did not need ESY services in the 2023-2024 school year as required by 34 C.F.R. §§ 300.106, 300.321, and 300.322(a). This resulted in a denial of FAPE.

Parent has alleged that the District did not allow her to participate in the determination that Student did not need ESY services.

A school district must provide ESY services when a child's IEP team, including the child's parents, determines on an individualized basis that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2). The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful and include consideration of a parent's concerns for enhancing the education of his or her child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), and 300.322, and 300.324(a)(1)(ii).

Here, it is undisputed that Student did not receive ESY services following the 2023-2024 school year and that there was no discussion of Student’s need, or lack of need, for ESY by the IEP Team or anyone else during the 2023-2024 school year. (FF #s 41-45.) Accordingly, the SCO finds and concludes, first, that the District implicitly determined that Student did not require ESY services and, second, that the District did not give Parent an opportunity to participate in that determination, in noncompliance with 34 C.F.R. §§ 300.106, 300.321, and 300.322.

Procedural noncompliance results in a denial of FAPE—allowing remedies such as compensatory services—only if the noncompliance (1) impeded a child’s right to a FAPE, (2) significantly impeded a parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765-66.

Because the District allowed Parent no opportunity to participate in the ESY determination, the SCO finds and concludes that the lapse “significantly impeded” Parent’s opportunity to participate in the decision-making process, resulting in a denial of FAPE. As a remedy, the SCO will order staff to review this Decision, including this discussion of the requirement that IEP Teams including parents must determine students’ need for ESY annually.

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

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

The District, as a regular practice, allows a teacher to begin providing services as a special education teacher prior to meeting the requirements for an appropriate special education endorsement or authorization. (FF # 11.) The CDE recognizes the challenge of staffing shortages outside the District’s control, and it acknowledges the District’s efforts to meet this challenge. However, state and federal law simply do not allow a teacher to act as a special education teacher without an appropriate endorsement or authorization. *See* 34 C.F.R. §§ 300.156, 300.207, and ECEA Rule 3.04. Accordingly, the SCO finds and concludes that it is likely that the District systemically allows teachers to act as special education teachers without an appropriate endorsement or authorization. As a remedy, the SCO will order the District to modify its hiring practices to ensure that every special education teacher holds a legally appropriate credential issued by the CDE prior to beginning work as a special education teacher.

REMEDIES

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

1. Ensuring that staff possess the required credentials as required by 34 C.F.R. § 300.156 and ECEA Rule 3.04.
2. Implementing Student's IEP by monitoring and reporting her progress on annual IEP goals as required by 34 C.F.R. § 300.323(c).
3. Allowing Parent to participate in the determination that Student did or did not need ESY services, as required by 34 C.F.R. §§ 300.106, 300.321, and 300.322.

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

1. Corrective Action Plan

- a. By **Friday, December 6, 2024**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. Review of Decision, Regulations, and Guidance

- a. The District's Director and Assistant Director of Special Education, as well as Teacher 1, must review this Decision. The review must occur no later than **Friday, December 6, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, December 13, 2024**.

3. Training

- a. The District's Director and Assistant Director of Special Education, Chief Human Resources Officer, Human Resources Manager, and all other staff responsible for hiring special education teachers must complete training provided by CDE regarding credentialing requirements.
- b. The District must schedule an initial consult regarding personnel qualifications with CDE Special Education Monitoring and Technical Assistance Consultant by **Friday, December 6, 2024**.

- c. This training must be completed by **Friday, February 14, 2025**. Evidence that this training occurred must be documented (e.g., 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 **Thursday, February 20, 2025**.

4. Compensatory Education Services

- a. The students who received instruction from Teacher 1 and will receive direct, in-person compensatory specialized instruction in literacy (which includes Parent’s child, Student) are in two groups and referenced according to their designation in Exhibit A:
 - i. Group 1, students who did not make clear progress on their literacy goals and whose IEPs required 60 to 120 minutes of specialized instruction: C1, C2, C4, C6, C8, C11, C12, C17, C19, and C20.
 - ii. Group 2, whose IEPs required 150 to 240 minutes: C3, C5, C7, C10, C15, C16, and C18.
- b. All compensatory services must be provided by **the end of the 2024-2025 school year**.
- c. By **Friday, December 6, 2024**, the District must notify—by letter, and also electronically if electronic communication is available—the parents of these students of the proposed plan (“Impacted Parents”) for compensatory education described in Exhibit D, as modified by this Decision to require less compensatory education for Group 1.
- d. Impacted Parents must provide written consent—either on paper or electronically—by **Wednesday, December 18, 2024**. If any Impacted Parents do not provide written consent for services by this date, District will be excused from providing compensatory services, provided District has made diligent attempts to reach those Impacted Parents. District must then provide to CDE Special Education Monitoring and Technical Assistance Consultant either: (1) the written consent or (2) all documentation evidencing diligent attempts to contact Impacted Parents including but not limited to, copies of correspondence sent to Impacted Parents and any responses received (such as e-mails) and contact logs (such as records of telephone calls made or attempted and the results of those calls). A determination that District has made diligent efforts to contact Impacted Parents and should be excused from providing compensatory services rests solely with the CDE.
 - i. Impacted Parents may opt out of some or all of the compensatory services.

- e. The District must submit the schedules of compensatory services, including the dates, times, and durations of planned sessions, to the CDE no later than **Friday, January 10, 2025.**
- f. If for any reason, including illness, a 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 consultation with parents and notify the CDE of the change in the appropriate service log.
- g. To verify that Impacted Students received the services required by this Decision, District must submit records of service logs to the CDE **by the second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- h. If the CDE determines, in its sole discretion, that additional information or action is necessary to verify or ensure that an Impacted Student received the compensatory services required by this Decision, it may require District to provide additional information—such as a student’s IEP, class schedule, or other documentation—or take any additional actions deemed necessary by the CDE.

5. Procedure

- a. By **Friday, January 31, 2025**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. §§ 300. 156, 300.207 and ECEA Rule 3.04. At a minimum, the procedure must offer clear guidance on the requirement for special education teachers to possess an appropriate endorsement or authorization prior to providing specially designed instruction without supervision from a properly credentialed special education teacher.
- b. 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.
- c. By **Friday, February 14, 2025**, CDE will approve the District’s draft procedures, approve them contingent upon the District’s adopting CDE’s revisions, or reject the procedures with guidance to the District on how they must be corrected.
- d. By **Friday, February 28, 2025**, the District must ensure that a copy of the approved procedures have been given to the individuals who must review this decision listed above in Remedies § 2(a); all school and charter school principals (or the school’s equivalent of a principal); all special education teachers, including special

education teachers in charter schools, all charter school network directors of special education, and each director of human resources within the District.

- e. If CDE has not approved the District's draft procedures by February 14, 2025, CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this subpart in CDE's sole discretion and according to CDE's interpretation of the purposes of this subpart.
- f. The CDE will conduct verification activities to ensure compliance with District's revised procedures and 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04.

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

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

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

CONCLUSION

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

Dated this 7th day of November, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint A, pages 1-12

- Exhibit 1: Regulations
- Exhibit 2: IEP
- Exhibit 3: Service log
- Exhibit 4: Correspondence
- Exhibit 5: Webpage printouts
- Exhibit 6: Webpage printouts
- Exhibit 7: Webpage printouts
- Exhibit 8: Audio
- Exhibit 9: Webpage printouts
- Exhibit 10: Correspondence
- Exhibit 11: Calendar
- Exhibit 12: Correspondence

Response A, pages 1-6

- Exhibit A: Student records
- Exhibits C-01 to C-23: Student records
- Exhibit D: Proposed compensatory education plan
- Exhibit E: Staff records
- Exhibit G: Calendars
- Exhibit H: Policies

Reply A, pages 1-2

Complaint B, pages 1-30

- Exhibit 13: Student records
- Exhibit 14: Correspondence
- Exhibit 15: Correspondence
- Exhibit 16: Evaluation
- Exhibit 17: Correspondence
- Exhibit 18: Student records
- Exhibit 19: Student records
- Exhibit 20: Student records
- Exhibit 21: Miscellaneous documents
- Exhibit 22: Student records
- Exhibit 23: Student records
- Exhibit 24: Student records
- Exhibit 25: Student records

- Exhibit 26: Student records
- Exhibit 27: Correspondence
- Exhibit 28: Student records
- Exhibit 29: Student records
- Exhibit 30: Student records
- Exhibit 31: Student records
- Exhibit 32: Correspondence
- Exhibit 33: Student records
- Exhibit 34: Audio
- Exhibit 35: Audio
- Exhibit 36: Audio

Response B, pages 1-6

- Exhibit AA: IEPs
- Exhibit BB: Evaluations
- Exhibit CC: Notices of meetings
- Exhibit DD: Other notices
- Exhibit EE: Meeting documentation
- Exhibit FF: Progress reports
- Exhibit GG: Policies
- Exhibit HH: Correspondence

Reply B, pages 1-6

- Exhibit 37: Webpage printout
- Exhibit 38: Webpage printout
- Exhibit 39: CDE document

Telephone Interviews

- Teacher 1: September 18, 2024
- Director: September 18, 2024
- Parent: September 20, 2024
- Human Resources Manager: September 20, 2024