

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

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**State Complaint SC2025-514**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On February 11, 2025, an attorney (“Complainant”) filed a state complaint (“Complaint”) on behalf of 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> against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations 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 February 14, 2025, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in impasse and the CDE resumed the investigation on March 13, 2025.

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 February 11, 2024. Information prior to February 11, 2024 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

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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> The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. District did not develop, review, and revise an Individualized Education Program (“IEP”) that was tailored to meet Student’s individualized needs from May 2024 to present because it:
  - a. Did not consider the concerns of Parent for enhancing the education of Student—specifically regarding math and social-emotional needs—as required by 34 C.F.R. § 300.324(a)(1)(ii);
  - b. Did not include the special education and related services—specifically, specialized math instruction and social-emotional services and supports—to enable Student to advance appropriately toward attaining annual goals and to be involved in and make progress in the general curriculum, as required by 34 C.F.R. § 300.320(a)(4); and
  - c. Did not review and, as appropriate, revise Student’s IEP to address information about Student provided to or by Parent and Student’s anticipated needs, specifically regarding bullying and math, as required by 34 C.F.R. § 300.324(b)(1).
2. District did not fully implement Student’s IEP from on or around August 15, 2024 to September 24, 2024, because it:
  - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and
  - b. Did not provide the specialized math instruction listed in the IEP, as required by 34 C.F.R. § 300.323(c).

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is eleven years old and is currently a sixth grader at a District middle school (“School”). *Complaint*, p. 2; *Response*, p. 1. Student is eligible for special education and related services under the disability category of a specific learning disability (“SLD”) in mathematical calculation and problem solving. *Exhibit D*, pp. 1-2.

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

2. Student is creative and enjoys drawing and spending time with her friends. *Interview with Parent; Exhibit A*, p. 3. She struggles with math, working memory, and anxiety. *Interview with Parent; Exhibit A*, p. 4.
3. Parent alleges District did not consider her concerns regarding Student’s challenges in math and social-emotional functioning in developing Student’s initial IEP in May 2024 and did not include sufficient services and support in the IEP to allow Student to make appropriate progress. *Complaint*, p. 4; *Reply*, pp. 2-3. Parent is further concerned District did not review and, as necessary, revise Student’s IEP to address Student’s needs and Parent’s concerns around bullying and math instruction during Fall 2024. *Complaint*, p. 3; *Reply*, pp. 2-6. Finally, Parent is concerned District did not fully implement Student’s IEP at the beginning of the school year and asserts Student’s math instruction is not appropriate for her needs. *Complaint*, p. 5; *Reply*, pp. 6-7.
4. District asserts that an IEP Team, including Parent, properly developed Student’s IEP and included appropriate goals and services to enable Student to make progress in the general curriculum. *Response*, pp. 3-4. Further, District asserts it offered to convene the IEP Team to review and revise Student’s IEP during Fall 2024 to address Parent’s concerns with bullying and math instruction, but Parent did not respond to District’s offers, and District did not otherwise have an independent indication that the IEP may need to be reviewed based on any changed needs. *Id.* at pp. 4-6. Finally, District concedes that it did not fully implement Student’s IEP for approximately five weeks at the beginning of the 2024-2025 school year but asserts there was no impact on Student’s math education as a result. *Id.* at pp. 7-8.

**B. Spring 2024: Parent’s Request for an Initial Evaluation and May 17 Incident**

5. During Spring 2024, Student was a fifth grader at a District elementary school (“Prior School”). *Response*, p. 2; *Exhibit A*, p. 1. On April 26, 2024, Parent expressed concern to District staff regarding Student’s challenges in math, focus, and anxiety as Student transitioned to middle school. *Exhibit D*, pp. 4, 8; *Interviews with Student’s special education case manager at Prior School (“Case Manager 1”) and Parent*. Based on her concerns, Parent requested an initial evaluation to determine Student’s eligibility for special education and related services. *Exhibit D*, p. 8.
6. District agreed to the evaluation and provided Parent with prior written notice (“PWN”) of its proposal to evaluate and a form seeking Parent’s consent to do so. *Id.* at pp. 4-5, 8-9. Parent provided consent to evaluate Student in the areas of general intelligence, academic performance, social and emotional status, and health. *Id.* at pp. 4, 9. On May 2, District issued Parent a notice of meeting scheduled for May 29, 2024, to review the evaluation data and determine Student’s eligibility. *Exhibit B*, p. 1.
7. On May 17, prior to the scheduled eligibility meeting, an incident occurred between Student and another fifth-grade student (“Other Student”) during Field Day. *Response*, p. 2; *Reply*, p. 2; *Exhibit N*, p. 3. Specifically, Other Student—who was a classmate and friend of Student at

the time—pushed Student onto the ground in an apparent attempt to keep Student from telling a secret. *Exhibit N*, p. 3; *Interview with Parent*. Prior School staff promptly responded and evaluated the situation, including speaking to Student, who reported she was “okay” and continued participating in Field Day, though she later complained of a headache. *Response*, p. 2; *Exhibit N*, p. 3. Later in the day, and unrelated to the incident with Other Student, Student fell and injured her ankle. *Response*, p. 2; *Exhibit N*, pp. 3, 9; *Interview with Parent*. Parent considers the May 17 incident to constitute bullying by Other Student. *Reply*, p. 2; *Interview with Parent*.

8. Following the May 17 incident, Prior School met with Parent, prepared an incident report, and spoke with two student witnesses, the teacher who responded, and Other Student and her parents. *Exhibit K*, pp. 1-2; *Exhibit N*, pp. 9-10, 14. Prior School also offered Student an opportunity “to share her side of the events to add to the other statements and build understanding”; however, Student did not return to Prior School after the May 17 incident due to Parent’s concerns with Student’s safety. *Response*, p. 2; *Exhibit N*, pp. 9-10; *Interview with Parent*.

### **C. Eligibility Determination**

9. On May 29, 2024, a properly convened multidisciplinary team (“MDT”), including Parent, met to review the evaluation report and consider Student’s eligibility for special education and related services. *Exhibit D*, pp. 1-3; *see Exhibit E*, pp. 1-16. The evaluation assessed Student in all areas identified in the consent to evaluate. *Exhibit E*, pp. 1-16; *see Exhibit D*, pp. 4-6, 8-9.
10. Case Manager 1 administered the Weschler Individual Achievement Test (“WIAT-4”) to evaluate Student’s academic performance. *Exhibit E*, pp. 4-9. Student’s composite mathematics score was in the low average range, and Student’s score in math problem solving was in the very low range; otherwise, Student’s academic scores fell in the average range. *Id.* at pp. 1-2, 4-9.
11. A school psychologist assessed Student’s executive functioning using the Behavior Rating Inventory of Executive Function (“BRIEF-2”), a rating scale used to assess possible deficits in executive functioning. *Id.* at p. 2. Student’s classroom teacher completed the assessment and rated Student’s working memory in the clinically elevated range, indicating Student may have “difficulty completing classroom tasks as she works to retrieve information from long term memory (while also holding information in her short term memory) in the service of learning.” *Id.*
12. A school social worker administered several assessments to evaluate Student’s social-emotional status:
  - The Behavior Assessment System for Children (“BASC-3”) evaluates how a student is perceived in different settings, with different expectations, as well as how their behavior compares to same-age peers. *Id.* at p. 13. Parent rated Student in the

clinically significant range for anxiety and attention problems and Student’s self-report indicated an at-risk elevation on the attention problems scale. *Id.* at pp. 14-15.

- District uses the BASC-3 Behavioral and Emotional Screening System (“BESS”) to collect social-emotional data on all students. *Id.* at p. 12. All Student’s scores fell within the normal range, other than Student’s externalizing risk index in Fall 2023, when Student’s scores were elevated; however, Student’s scores improved as the 2023-2024 school year continued, indicating Student “learned to cope/deal with some of the behaviors/feelings that she was experiencing.” *Id.* at pp. 1, 12-13.
- The Multidimensional Anxiety Scale for Children (“MASC-2”) indexes the range and severity of anxiety symptoms. *Id.* at pp. 15-16. Student scored in the very elevated range in the area of obsessions and compulsions and in the elevated range in physical symptoms and generalized anxiety disorder index. *Id.* at pp. 15-16.

13. The evaluation report also included a health assessment, conducted by the school nurse, which indicated Student “is known to have anxiety that may impact her education.” *Id.* at p. 16.

14. The MDT found Student eligible for special education and related services under the disability category of SLD in math. *Id.* As a result of the MDT’s eligibility determination—and at this same meeting—a properly convened IEP Team, including Parent, developed Student’s initial IEP (“2024 IEP”). *Exhibit A*, pp. 1-21.

#### **D. 2024 IEP**

15. The 2024 IEP describes Student’s then-present levels of performance, noting Student’s needs in math, working memory, and social-emotional functioning. *Id.* at p. 4. The IEP describes interventions that had previously been implemented for Student in the general education classroom, including math intervention. *Id.* Teacher input reflects concerns with Student’s recollection of math concepts, writing structure, and focus; however, teacher input also indicates Student had shown growth in asking for help and in relationships with peers. *Id.* at p. 5. The 2024 IEP also includes extensive data from the evaluation report. *Id.* at pp. 3-12.

16. The 2024 IEP describes the impact of Student’s disability on her involvement in the general education curriculum, noting Student’s challenges in math, working memory, and self-esteem impact her ability to access grade-level curriculum without accommodations in the general education setting and specialized instruction to address math and social-emotional needs. *Id.* at p. 13.

17. The 2024 IEP includes a parent input section, which indicates Parent’s concerns with Student’s “academics, attention, and social-emotional functioning (anxiety),” as well as Student’s safety at school. *Id.* The IEP Team identified some of Student’s social-emotional challenges and included services, accommodations, and an annual goal to address those

challenges. *Interview with Case Manager 1; see Exhibit A*, pp. 4, 13, 15-16. However, the IEP Team did not include—and Parent did not request—services or supports in the 2024 IEP to address the May 17 incident or bullying, specifically. *Interviews with Case Manager 1 and Parent*. Instead, the May 17 incident was addressed outside the IEP process via District’s general education procedures. *Interviews with Case Manager 1 and School’s Assistant Principal*.

18. The 2024 IEP includes two annual goals:

- Mathematics: “By May 2025, [Student] will improve her word problem solving skills involving ratios, proportional relationships, algebraic expressions, and equations while double checking her work and assessing her solution for accuracy and reasonableness as measured by improving from 0% to 75% correct on a grade level curriculum based measure probe (Math Numbers Operations and Algebra) starting at level 6-1. This goal will be measured by the special education teacher.” *Exhibit A*, p. 14.
- Social/Emotional: “By May 2025, in order for Student to productively deal with emotions and perceived set-backs, when provided specialized instruction on reducing anxiety, increasing self confidence and coping strategies, Student will increase her score on a internalizing problems progress monitoring probe from a baseline t-score of 0 to a t-score of 50 or lower for at least three consecutive progress monitoring points as measured by a student completed self-report form and reviewed by the social worker.” *Id.* at pp. 15-16.

19. The 2024 IEP includes sixteen accommodations to support Student’s needs in math, working memory, and social-emotional functioning in the general education environment. *Id.* at pp. 16-17.

20. The 2024 IEP’s service delivery statement identifies the following services:

- 200 minutes per week of direct specialized instruction in math provided by the special education teacher outside the general education classroom to develop skills in “math problem solving, using provided resources to access background knowledge to support math problem solving, [and] checking for accuracy and reasonableness”; and
- 120 minutes per month of direct specialized instruction to address social-emotional functioning, provided by the school social worker outside the general education classroom, focused on “reducing anxious feelings, reducing feelings of inadequacy, increasing coping strategies and self advocacy.”

*Id.* at p. 19.

21. The 2024 IEP indicates the IEP Team “considered whether [Student] would benefit from specialized instruction inside or outside of the general education classroom to address her needs in the area of mathematics.” *Id.* at p. 21. Ultimately, the Team “rejected the option of specialized instruction inside of the general education classroom because [Student] would benefit from a smaller group setting in the area of mathematics.” *Id.*; *Interview with Case Manager 1*.
22. The 2024 IEP reflects that it was appropriate for Student to be in general education at least 80% of the time. *Exhibit A*, p. 20. The IEP Team determined this was the most appropriate placement to ensure Student’s access to the general education curriculum and peers “for the majority of the school day” while providing specialized instruction to address her social-emotional and math needs. *Id.*

#### **E. The Separation Plan**

23. As the 2024-2025 school year approached, Parent remained concerned about Student’s safety at school following the May 17 incident and the possibility of continued bullying by Other Student. *Complaint*, p. 4; *Interview with Parent*. Parent expressed those concerns to various District staff throughout the summer and requested a separation plan between Student and Other Student. *Response*, p. 2; *Interview with Parent*; see *Exhibit K*, pp. 24-25, 42-44, 48-51; *Exhibit 1*, pp. 84, 86. “While the District had no direct basis to believe that [Student] was under any ongoing threat, had experienced bullying, or even wanted a separation plan, District staff initially yielded to Parent’s demand and agreed to separate the students.” *Response*, p. 2; *Interviews with Student’s special education case manager at School (“Case Manager 2”) and Assistant Principal*.
24. On August 9, 2024, District informed Parent that, due to Parent’s request for separation, School had “placed both girls in different ‘houses’ so that they would have no interaction or overlap” and had conducted a “review of schedules and ensure[d] there are no classes together, no elective periods together, and no lunches together.” *Exhibit 1*, p. 84; *Exhibit K*, pp. 42, 86. The separation plan was not reduced to writing, but instead was an informal plan while School got to know Student, Other Student, and the circumstances of Parent’s request. *Interview with Case Manager 2*.
25. District also confirmed with Parent that School’s special education team was “available to support [Student] emotionally (as well as per her IEP) if she needs any help settling in” and that “appropriate measures” had been taken regarding the May 17 incident with Other Student, in accordance with District disciplinary policy. *Exhibit K*, p. 83.

#### **F. District Policies, Practices, and Procedures**

26. District’s comprehensive special education procedural guidance document (“the Procedure”) describes District’s responsibilities under the IDEA and includes, among other things,

procedures regarding the IEP development, review, revision, and implementation processes. *Exhibit J*, pp. 1-60.

27. The Procedure requires that an MDT determines a student's eligibility for special education and related services and an IEP team develops a student's initial IEP and otherwise "make[s] decisions about the student's educational program." *Id.* at pp. 23-25. "Parents are integral members of their child's IEP Team" and must have the opportunity to meaningfully participate in the IEP development process. *Id.* at p. 25.
28. A student's IEP "can always be modified or amended at any time if conditions warrant," including the need to adjust the service delivery setting. *Exhibit J*, p. 55; *Interviews with District senior manager of special education ("Senior Manager") and School's special education instructional specialist ("SEIS")*. Typically, an IEP Team meeting is required to conduct an IEP amendment. *Interview with Senior Manager*. However, amendments "may be made at any time without holding an IEP meeting, if [District] and the parents agree." *Exhibit J*, p. 55; *Interviews with Senior Manager and SEIS*. In any event, the Procedure requires that notice be provided to parents when there is a change in a student's IEP services. *Exhibit J*, p. 56; *Interviews with Senior Manager and SEIS*.
29. Under the Procedure, IEPs must be implemented "as written" and services must be delivered "in accordance with the IEP." *Exhibit J*, pp. 30-31. Special education case managers are responsible for informing all staff involved in the implementation of an IEP of their responsibilities to implement the IEP as written, and both case managers and school principals are responsible for monitoring service delivery commitments and students' progress. *Id.* at pp. 30, 35; *Interviews with Case Manager 2 and Assistant Principal*. District monitors IEP implementation via service logs, progress monitoring, and IEP annual reviews. *Exhibit J*, p. 53; *Interviews with Senior Manager, Case Manager 2, and Assistant Principal*.

#### **G. IEP Accessibility**

30. District conducts a professional development week for all District staff prior to the start of each school year, during which case managers provide relevant staff with IEP "snapshots" and both general education and special education teachers are given the opportunity to review students' IEPs and ask questions of case managers. *Response*, p. 6; *Interview with Case Manager 2*.
31. Case Manager 2 received a copy of Student's 2024 IEP, had continuous access electronically, and shared the IEP snapshot with Student's other teachers, including Student's push-in special education teacher ("Special Education Teacher") and School's social worker ("Social Worker"), who were responsible for providing services to Student under the 2024 IEP. *Interviews with Case Manager 2 and Social Worker*.

#### **H. IEP Implementation – Math Instruction**

32. Student began sixth grade at School on August 19, 2024. *See Exhibit I*, p. 2. From August 19 through September 23, 2024—a total of 25 school days— Student received the 200 minutes per week of direct specialized math instruction required by her IEP via push-in services from Special Education Teacher inside Student’s general education math class. *Response*, pp. 2, 6-8.
33. Student was originally slated to be in a pull-out intervention class for her specialized math instruction, in accordance with her IEP; however, because Other Student was also in the pull-out intervention class, School administrators and Case Manager 2 collaboratively determined the setting of Student’s math instruction, given Parent’s request for separation. *Response*, pp. 2, 7; *Interview with Case Manager 2*.
34. Due to a misunderstanding or miscommunication between Case Manager 2 and SEIS, Case Manager 2 believed Student’s IEP was being implemented with fidelity at the time Student’s math schedule was created. *Interview with Case Manager 2*. Specifically, it was Case Manager 2’s understanding, after consulting with SEIS, that any services which differed from general education instruction were considered “outside minutes,” even if provided in the general education setting. *Exhibit K*, pp. 120-21; *Interviews with Case Manager 2 and SEIS*.
35. Case Manager 2 and SEIS acknowledge this misunderstanding and explained that while services that differ from general education instruction are considered *specialized instruction* under a student’s IEP—whether provided inside or outside the general education setting—the service delivery setting is distinct and must be provided as written in the IEP. *Interviews with Case Manager 2 and SEIS*. District staff also acknowledge that an IEP amendment and notice to Parent would have been appropriate here to change Student’s service delivery setting in math, consistent with District procedure. (FF # 28). *Interviews with Senior Manager, SEIS, and Case Manager 2*.
36. On September 9, 2024, Parent emailed Case Manager 2 expressing concern that Student was not being pulled out of her general education class for math instruction, as required by her IEP. *Exhibit K*, p. 194-95, 198; *Interview with Parent*. On September 19, Case Manager 2 informed Parent that Student would begin receiving her 200 minutes per week of specialized math instruction outside the general education setting. *Exhibit K*, p. 37. On September 24, Student began receiving her math services outside of the general education setting, as her IEP required. *Response*, p. 7; *see Exhibit F*, p. 14.
37. District acknowledges it provided Student’s math instruction in the improper setting from August 19, 2024, through September 23, 2024, for a total of 25 school days. *Response*, p. 7. During this time, District “fully offered the minutes required by [Student’s] IEP, apart from the discrepancy as to setting,” via push-in services by Special Education Teacher inside the general education setting. *Id.* District asserts that this discrepancy did not impact Student’s education, as evidenced by her documented progress on IEP annual goals, passing grades, and continued progress in the general curriculum. *Id.* at pp. 7-8.

38. Complainant asserts that, since Student began receiving pull-out instruction on September 24, District has only provided 30 minutes of specialized math instruction per day, “far short of the 200 minutes per week required by [her] IEP.” *Complaint*, p. 5. However, Case Manager 2’s service logs indicate Student was provided with 40 minutes of specialized math instruction per day, or 200 minutes per week, consistent with the 2024 IEP. *Exhibit F*, pp. 3-13. Therefore, the CDE finds that Student was provided the 200 minutes per week of specialized math instruction that her IEP required starting on September 24.

### **I. Parent’s Concerns: Bullying and Math Instruction**

39. As part of Student’s schedule change to begin providing her math instruction in the correct setting, School removed the informal separation plan between Student and Other Student after District staff observed no bullying of any kind, and Student and Parent reported none this school year. *Response*, p. 7. Nevertheless, Parent became concerned that School “would be placing [Student] in classroom with her bully” against Parent’s request for a separation plan. *Exhibit K*, p. 36; *Interview with Parent*.

40. On October 1, 2024, Complainant, Parent, Case Manager 2, and SEIS met to discuss Parent’s concerns with bullying, among other issues. *Exhibit K*, pp. 12, 23; *Interview with Case Manager 2 and Parent*. This was not an IEP Team meeting, but rather an information-gathering meeting to better understand Parent’s concerns. *Id.*

41. In response to Parent’s bullying concerns, Social Worker—who provided Student’s 120 minutes per month of direct specialized social-emotional instruction—described Student reported feeling safe and comfortable at school and that she was communicative about school, home, her interests, and things that bother her. *Exhibit K*, p. 14; *Interview with Social Worker*. Neither Student nor Parent reported any instances of bullying by Other Student this school year (or any peer conflict with other students), and School staff observed no such behavior. *Interviews with Social Worker and Case Manager 2*. Social Worker also reported no indication that Student may feel unwilling or unable to report bullying; instead, Social Worker expressed that Student has grown in the area self-advocacy this school year and is comfortable speaking with Social Worker and other teachers at School. *Interview with Social Worker*.

42. On October 17, Case Manager 2 informed Parent that School was not implementing a formal separation plan—and removing the informal plan—as there was “no indication that there is an ongoing safety or bullying concern related to [Other Student], nor that [Student] is feeling unsafe at school.” *Exhibit K*, p. 11. Case Manager 2 offered to convene the IEP Team several times to further discuss Parent’s concerns, but Parent did not respond to those offers, as Parent felt that further meetings would not be productive. *Id.* at pp. 8-10, 100; *Interviews with Case Manager 2 and Parent*.

43. Case Manager 2, who teaches the intervention class with both Student and Other Student, has not observed—nor have Student or Parent reported—any instances of bullying or peer

conflict with Other Student this school year. *Response*, p. 2; *Interview with Case Manager 2*. Instead, Case Manager 2 describes the students as “buddies” who have interacted in class without incident since Student joined the class at the end of September 2024. *Interview with Case Manager 2*. Parent, however, is concerned that Student felt like she “had to be friends” with Other Student to be friends with other students in the class. *Interview with Parent*.

44. Despite the adjustment in Student’s schedule to provide her math instruction in accordance with her IEP, Complainant asserts Student’s math instruction is inappropriate for her needs and that District should have reviewed and revised Student’s IEP to address Parent’s concerns and Student’s needs in math. *Complaint*, p. 5; *Reply*, p. 3. Specifically, Complainant asserts that Student’s math schedule—in which she is pulled out of her general education math class midway through and into intervention class for her specialized math instruction—is too confusing and has resulted in a lack of progress compared to peers. *Reply*, p. 3; *Interview with Parent*.

#### **J. Student’s Progress on Annual Goals, Attendance, and Grades**

45. Student regularly attended school and earned passing grades in all classes during the Fall 2024 semester. *Response*, p. 1; *Exhibit G*, pp. 13-19.
46. Student’s progress reporting on her IEP annual goals reflects she made progress on both of the 2024 IEP’s annual goals. *Exhibit H*, pp. 1-7, 13-14. In math, Student’s score in her most recent curriculum-based measure from February 2024 fell in the 52nd percentile, reflecting dramatic growth from her Fall score, which fell in the 8th percentile. *Response*, p. 4; *Exhibit K*, p. 8. Social Worker also described the progress Student has made in terms of self-advocacy and using coping skills to handle anxiety. *Interview with Social Worker*.
47. Complainant acknowledges Student has earned passing grades and is progressing on IEP annual goals but asserts academic progress is only one factor in determining educational benefit and that District has relied “*exclusively* on academic progress” as the reason for not reviewing and revising Student’s 2024 IEP to address Parent’s concerns and Student’s anticipated needs. *Reply*, pp. 2-3.
48. Student’s IEP annual review is due to be completed by May 28, 2025. *Exhibit A*, p. 1.

#### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District developed an IEP tailored to Student’s individualized needs, as required by 34 C.F.R. §§ 300.320 and 300.324. District was not required to review and revise Student’s IEP to address any changed needs around bullying or math under 34 C.F.R. § 300.324(b). District complied with IDEA.**

Complainant's concern is that District did not consider Parent's concerns in developing the initial IEP, did not include sufficient services in math or social-emotional functioning to enable Student to make appropriate progress, and did not review and revise Student's IEP in Fall 2024 to address Parent's concerns and Student's needs related to bullying and math. (FF # 3).

### **A. Legal Requirements for IEP Development**

The IEP is "the centerpiece of [IDEA'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." *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)). The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Id.* at 399.

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. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.* Here, the concerns raised by Parent challenge the development and substantive adequacy of the 2024 IEP.

### **B. 2024 IEP Development Process**

#### *i. Consideration of Parent's Concerns*

In developing an IEP, the IEP Team must consider, among other things, the "concerns of the parents for enhancing the education of their child." 34 C.F.R. § 300.324(a)(1)(ii). The IDEA requires that parental participation, and the IEP team's consideration of parents' concerns, be meaningful. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Here, Parent raised concerns regarding Student's challenges with math and social-emotional functioning and requested an initial IDEA evaluation in those areas. (FF # 5). Student was evaluated in all areas of parental concern; the 2024 IEP was developed by a properly convened IEP Team, including Parent, which reached consensus on the services and supports appropriate for Student's needs; and the 2024 IEP includes parental input and an annual goal to address Student's challenges in both math and social-emotional functioning. (FF #s 9, 14-20). Accordingly, the CDE finds and concludes that District carefully considered Parent's concerns when developing the 2024 IEP, as required by 34 C.F.R. § 300.324(a).

The CDE next turns to the adequacy of the IEP—that is, whether it was reasonably calculated to enable Student to receive an educational benefit. *Rowley*, 458 U.S. at 207.

### **C. Substantive Adequacy of the 2024 IEP**

#### *i. Specialized Math and Social-Emotional Instruction*

An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F.*, 580 U.S. at 399. To that end, an IEP must include measurable annual goals and a statement of the special education and related services designed to “[m]eet the child’s needs that result from the child’s disability” to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general curriculum, and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(2), (4).

Here, the 2024 IEP required that Student receive 200 minutes per week of direct specialized math instruction outside the general education setting and 120 minutes per month of direct specialized instruction to address Student’s social-emotional challenges. (FF # 20). These services were developed in consideration of Student’s individualized needs as reflected in the evaluation and as determined by the IEP Team. (FF #s 9-14, 15-22). Therefore, the CDE finds and concludes the 2024 IEP included sufficient special education and related services—including appropriate IEP annual goals and an appropriate amount of specialized instruction to address Student’s challenges in math and social-emotional functioning—to allow Student to attain annual goals and make progress in the general curriculum in light of her circumstances, as required by 34 C.F.R. § 300.320(a). And, indeed, Student did make progress in the general curriculum and on IEP annual goals. (FF #s 45-47). Accordingly, the CDE finds and concludes that the 2024 IEP was reasonably calculated to enable Student to receive an educational benefit and, therefore, was substantively appropriate. *Rowley*, 458 U.S. at 206.

### **D. Legal Obligation to Review and Revise IEPs**

Complainant’s concern is that District did not review and revise Student’s 2024 IEP to address information provided by Parent and Student’s anticipated needs regarding math instruction and bullying. (FF # 3).

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F.*, 580 U.S. at 399. The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* at 400. To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address any lack of expected

progress toward the annual goals, the results of any reevaluation, “[i]nformation about the child provided to, or by, the parents,” “[t]he child’s anticipated needs,” or other matters. *Id.*; see *Andrew F.*, 580 U.S. at 400.

The U.S. Department of Education confirmed that an “IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it.” *Questions and Answers on Andrew F.*, 71 IDELR 68 (EDU 2017). This includes monitoring and revising an IEP as necessary, particularly if appropriate progress is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.*

*i. 2024 IEP Review and Revision to Address Bullying*

Under Colorado law, bullying is defined as “[a]ny written or verbal expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student.” Colo. Rev. Stat. § 22-32-109.1(1)(b). According to the U.S. Department of Education (“DOE”), “any bullying of a student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.” *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013). The DOE characterizes bullying as “aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time.” *Id.* Bullying can take a variety of forms, including physical, verbal, emotional, or social behaviors. *Id.*

School districts “have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive a FAPE in accordance with his or her IEP.” *Id.* In response to bullying, a school district should convene the student’s IEP team to “determine whether, as a result of the effects of bullying, the student’s needs have changed such that the IEP is no longer designed to provide meaningful educational benefit.” *Id.*

Here, Parent considers the May 17 incident to be bullying by Other Student and is concerned that behavior has the potential to be repeated at School. (FF #s 7, 23). As an initial matter, the Record does not indicate the May 17 incident was bullying, as defined by Colorado law and federal guidance. (FF #s 7-8). While any physical incident between students is unacceptable and understandably upsetting to the recipient of that behavior, the Record does not indicate that Other Student had more real or perceived power than Student. (FF # 7). Instead, the preponderance of the evidence indicates this was an incident between friends and classmates that, unfortunately, went too far and became physical. (*Id.*).

Nevertheless, Prior School promptly investigated the incident, disciplined Other Student in accordance with District disciplinary procedures, and attempted to assuage Parent’s concerns by implementing an informal separation plan at the beginning of the school year. (FF #s 7-8, 17, 23-25). Further, District has not observed any instances of bullying or peer conflict between Student and Other Student (or any other students) this school year, and Student and Parent have reported

none. (FF #s 39, 41-43). Finally, District offered to convene the IEP Team to further discuss Parent’s concerns regarding bullying or Student’s social-emotional health and review and revise Student’s IEP, as needed; however, Parent did not respond to District’s offers to convene the IEP Team. (FF # 42).

The CDE empathizes with the challenge of navigating the social dynamics and anxieties of sixth grade, and this Final Decision is not intended to in any way minimize Student’s challenges in those areas, which are real and valid. However, the Record reflects that District did not have an independent obligation—given observations from School staff, Student’s progress on annual IEP goals, and Student’s self-reporting as part of her social-emotional goal—to review and revise Student’s IEP to address bullying concerns. (FF #s 39, 41-42, 45-47).

Still, to address Parent’s concerns with bullying and ensure Student continues to receive a FAPE, District offered to convene the IEP Team. (FF # 42). And there is no indication in the Record that any peer conflict with Other Student impacted Student’s ability to receive a FAPE. (FF #s 44-48). For these reasons, the CDE finds and concludes District was not obligated to review and revise Student’s IEP to address the effects of bullying under 34 C.F.R. § 300.324(b). *See Denver Pub. Schs.*, 124 LRP 34353 (SEA CO 08/27/23).

ii. 2024 IEP Review and Revision to Address Math Instruction

Here, Parent objected to both the push-in math instruction provided to Student at the beginning of the school year in the general education setting—the improper setting under the 2024 IEP—and the pull-out math instruction provided since September 2024, in accordance with the 2024 IEP. (FF #s 36, 38, 44). Specifically, Parent describes Student’s math schedule as confusing for Student, particularly due to the timing of when Student is pulled out of general education math class for specialized instruction. (FF # 44). However, as School was just getting to know Student, District offered to reconvene the IEP Team to discuss any issues with Student’s math instruction, or if Student’s confusion with the schedule persisted, which was appropriate under the circumstances. (FF # 42). *See El Paso 20 (Acad.) Sch. Dist.*, 125 LRP 2530 (SEA CO 12/06/24) (finding the district appropriately “agreed to continue to monitor student for any changed needs” when the IEP Team was just getting to know student). In this case, Parent did not respond to District’s offers to convene the IEP Team. (FF # 42). For these reasons, the CDE finds and concludes District was not obligated to review and revise Student’s IEP to address Parent’s concerns or any changed needs in math instruction under 34 C.F.R. § 300.324(b).

**Conclusion to Allegation No. 2: District did not fully implement Student’s IEP from August 19, 2024, through September 23, 2024, because it did not provide Student’s specialized math instruction outside the general education setting in accordance with her IEP, as required by 34 C.F.R. § 300.323(c). This noncompliance did not result in the denial of FAPE.**

Complainant is concerned that 1) Student did not receive the 200 minutes per week of specialized math instruction outside the general education setting for several weeks at the beginning of the

2024-2025 school year, as required by her IEP; and 2) once math instruction was provided in the proper setting, Student was not provided all the service minutes required by her IEP. (FF # 3).

#### **A. IEP Implementation: Legal Requirements**

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 Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

#### **B. 2024 IEP: Accessibility and Responsibilities**

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the Record reflects that Case Manager 2, Special Education Teacher, and Social Worker had access to Student’s 2024 IEP, were informed of their specific responsibilities related to its implementation, and largely understood those responsibilities, notwithstanding Case Manager 2’s misunderstanding of service delivery setting requirements under the facts of this unique situation. (FF #s 30-31, 34-35). Accordingly, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

#### **C. 2024 IEP: Implementation of Math Instruction**

The CDE must determine whether District satisfied its obligations under 34 C.F.R. § 300.323(c). Here, the 2023 IEP required that Student be provided with 200 minutes of specialized math instruction outside the general education setting. (FF # 20). District has acknowledged that it provided Student’s math instruction in the improper setting for 25 school days at the beginning of the school year. (FF # 37).

Accordingly, the CDE finds and concludes that District did not fully implement Student’s math instruction as written in the IEP from August 19, 2024, through September 23, 2024, as required by 34 C.F.R. § 300.323(c)(2).

#### **D. Materiality of Noncompliance**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. The failure to implement a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE).

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

However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. & K.C. v. Utah State Bd. of Educ.*, 125 F. App’x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student's ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 05/04/18). Instead, “the [CDE] must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 F. App’x 202, 205 (2d Cir. 2010).

Here, District did not provide Student the 200 minutes per week of specialized math instruction outside the general education setting—for a period of 25 school days—as required by her 2024 IEP. (FF # 37). However, this did not interfere with Student’s ability to derive an educational benefit—Student still received her direct math instruction from a special education teacher during this time, albeit within the general education setting. (FF # 32). Moreover, Student made substantial progress on her 2024 IEP annual goal in math over the course of the 2024-2025 school year, attended School regularly, and has achieved passing grades in all classes. (FF #s 45-47). Therefore, the CDE finds and concludes that District’s noncompliance with 34 C.F.R. § 300.323(c) was not material and did not result in a denial of FAPE.

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in the 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 the District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are “critical” to the SEA’s exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, District’s noncompliance with 34 C.F.R. § 300.323(c) is the result of District staff misunderstanding or miscommunicating the service delivery setting requirements under the unique circumstances of this case; specifically, given Parent’s request for a separation plan and District’s decision to initially comply with that request. (FF #s 23-25, 33-36). District acknowledges its error in providing Student’s math instruction in the improper setting for a period of five weeks at the beginning of the 2024-2025 school year, and District procedures regarding IEP implementation are consistent with IDEA’s requirements. (FF #s 26-29, 37). The Record does not otherwise indicate this noncompliance is likely to impact the future provision of services for all children with disabilities in the District if not corrected.

### **REMEDIES**

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

1. Providing Student with the specialized math instruction listed in her IEP, as required by 34 C.F.R. § 300.323(c).

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

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

- a. By **June 9, 2025**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to 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. Senior Manager, Assistant Principal, SEIS, Case Manager 1, Case Manager 2, Social Worker, and Special Education Teacher must read this decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.323, by **June 23, 2025**. If these individuals are no longer employed by the District, the District may substitute

individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **June 30, 2025**.

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

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

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

### **CONCLUSION**

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

Dated this 9th day of May, 2025.



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Lee Sosebee, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-8**

- Exhibit 1: Supporting Documentation

### **Response, pages 1-9**

- Exhibit A: IEP
- Exhibit B: Notice of Meeting
- Exhibit C: Prior Written Notices
- Exhibit D: Referral and Eligibility Documentation
- Exhibit E: Evaluation Report
- Exhibit F: Service Log
- Exhibit G: Attendance and Grades
- Exhibit H: Progress Reports
- Exhibit I: District Calendars
- Exhibit J: Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L: Staff Information
- Exhibit M: Verification of Delivery
- Exhibit N: Incident Reports

### **Reply, pages 1-7**

- Exhibit 2: Evaluation
- Exhibit 3: October PWN
- Exhibit 4: Correspondence
- Exhibit 5: Correspondence
- Exhibit 6: Grades Reports
- Exhibit 7: Correspondence
- Exhibit 8: Correspondence

### **Telephone Interviews**

- Senior Manager: April 10, 2025
- Assistant Principal: April 11, 2025
- Case Manager 1: April 11, 2025
- Social Worker: April 11, 2025
- Case Manager 2: April 11, 2025
- Parent: April 14, 2025
- SEIS: April 23, 2025