

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

**State-Level Complaint 2019:531
Cherry Creek School District**

DECISION

I. INTRODUCTION

The mother and father (“Parents”) of a student (“Student”) identified as child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ initiated this action against Cherry Creek School District (“District”) through a state-level complaint (“Complaint”) properly filed on Student’s behalf by legal counsel (“Student’s Attorney”) on Friday, April 26, 2019.

The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

II. RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has the authority to investigate alleged violations of the IDEA that occurred not more than one year from the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will be limited to events that transpired no earlier than April 26, 2018 to determine whether or not a violation of IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate the allegation accepted in this matter. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

III. COMPLAINT ALLEGATION

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

1. Failed to properly implement Student’s IEP as amended on March 8, 2019, specifically as follows:

¹ The IDEA is codified at 20 U.S.C. § 1400, et seq. and its corresponding regulations are found at 34 C.F.R. § 300.1, et seq. IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”), found at 1 CCR 301-8, 2220-R-1.00, et seq.

- a. Failed to provide transportation to and from District’s Expulsion Program from March 27, 2019 through March 30, 2019, in violation of 34 C.F.R. § 300.323.
- b. Failed to provide the amount of specialized instruction and speech/language services detailed in the IEP’s service delivery statement, from March 27, 2019 to the present, in violation of 34 C.F.R. § 300.323.

IV. FINDINGS OF FACT

After a thorough analysis of the Record as detailed in the appendix attached and incorporated by reference, the SCO makes the following FINDINGS OF FACT:

A. Background

1. This dispute involves educational programming that was the subject of state-level complaint 2019:510, an action commenced by Student’s Attorney against District on February 20, 2019. *Exhibit J*. The inquiry into state-level complaint 2019:510 resolved two allegations unrelated to the sole claim raised in the instant Complaint, and resulted in findings of IDEA compliance by District, as detailed in the final Decision formally issued by this SCO on April 19, 2019. *Id*.
2. The present investigation likewise concerns Student, a sixteen-year-old currently eligible for special education and related services under the primary category of [Disability], with a secondary disability of [Disability] and [Disability]. *Exhibit A*, p. 30. Though presently enrolled in a neighborhood school (“School”) within District as a sophomore, Student most recently attended District’s program for expelled students (the “Expulsion Program”). *Interviews with Parents and Secondary Special Education Director*.
3. Two full-time instructors, in math (“Math Teacher”) and English (“English Teacher”), and a psychologist (“School Psychologist”), administer day-to-day operations for the Expulsion Program. *Id*. By all accounts, Student demonstrated a commitment to completing the curriculum he received while at the Expulsion Program, consisting primarily of an assortment of worksheets, as well as consistency in terms of compliance and positive behavior. *Interviews with Parents, Special Education Teacher, School Psychologist, Math Teacher, and English Teacher*. Expulsion Program educators praised Student’s strong interpersonal skills, but acknowledged his need for specialized academic instruction in math and reading. *Interviews with Math Teacher and English Teacher*. Student identified “peer pressure” as an issue leading to his placement in the Expulsion Program. *Interview with School Psychologist*.
4. For reasons fully detailed in the final Decision for state-level complaint 2019:510, Superintendent expelled Student for one calendar year on February 12, 2019 following a third offense violation of District’s Conduct and Discipline Code (“Student Code of Conduct”).

Exhibit J, pp. 4-11. A manifestation determination team had concluded the at-issue behavior was not a manifestation of Student’s disability, and not the result of School’s failure to implement either an individualized education plan (“IEP”) or a behavior intervention plan (“BIP”). *Id.* at p. 4. On March 8, 2019, an IEP Team convened to review and revise, as necessary, Student’s offer of special education and related services. *Exhibit 1*. This meeting resulted in modification of Student’s IEP (the “Amended IEP”), with the ensuing provision of the services contained therein giving rise to the immediate Complaint on April 26, 2019. *Id.*

5. Parents assert that District failed to provide Student with required transportation and the specified minutes of specialized instruction starting on March 27, 2019, resulting in incomplete and inconsistent implementation of the Amended IEP. *Complaint*, pp. 7-8. District concedes that a “clerical error” culminated in a few days of missed transportation, but responds that Student otherwise had “access to the full panoply of specialized instruction and related services necessary to receive FAPE while in the Expulsion Program.” *Response*, pp. 5-7. The SCO first considers the Amended IEP’s statement of special education services.

B. The Amended IEP

6. Secondary Special Education Director facilitated the March 8, 2019 IEP meeting through which the Amended IEP was developed. *Interview with Secondary Special Education Director*. A properly convened IEP Team, to include Student’s father and family’s legal counsel, modified three sections according to a one-page document titled “Amendment to the Individualized Education Program.” *Exhibit A*, p. 27. First, the IEP Team added “[s]pecial education transportation services while at [Expulsion Program].” *Id.* Second, the IEP Team noted that an “agreement was made between the family and the district to have an outside BCBA therapist come in to complete an evaluation to update his [functional behavior assessment] FBA and BIP.” *Id.* Third, the IEP Team indicated that “[Student] will attend the [Expulsion Program] where specialized curriculum will be provided by special education teacher. The [Expulsion Program] will follow the FBA/BIP.” *Id.* It adds: “[s]pecial education curriculum will be provided to [Student] due to his disability and needs from his IEP.” *Id.*
7. In terms of the third section, the IEP Team plugged the following into the Amended IEP’s service delivery statement: “[d]uring the period of expulsion, [Student] will receive specialized instruction in English, math, science, and social studies. The curriculum will be provided by [Intensive Learning Community Program (“ILC”)] home teacher and delivered to the [Expulsion Program] teachers. [Student] will also receive mental health support at the [Expulsion Program] through the FBA/BIP.” *Id.* at p. 39. The SCO finds that the IEP Team orally noted that he would receive this ILC curriculum while at the Expulsion Program, whereas Expulsion Program participants generally receive just two core credits in English and math. *Interviews with Secondary Special Education Director, Special Education Teacher, and Parents*.

8. Secondary Special Education Director and Special Education Teacher advised that the IEP Team did not explicitly include speech/language support as part of this “specialized curriculum” because the Amended IEP’s communication goal relates to written abilities, like producing complex sentence structures, which were to be addressed through the ILC English curriculum. *Interviews with Secondary Special Education Director and Special Education Teacher*. Each educator emphasized to the SCO that this “specialized curriculum” enabled Student to both participate in general education and progress toward achieving the four goals outlined in the Amended IEP because it was grounded in instruction he had received through the ILC Program at School, and it allowed Student to earn needed credits for graduation. *Id.*
9. To start the March 8, 2019 IEP meeting, Secondary Special Education Director asked Student’s father for preferences with respect to interim educational programming. *Interviews with Secondary Special Education Director and Parents*. Student’s father replied with expectations that Student continue to receive adequate instruction during the period of expulsion in order to graduate from high school, and thereafter join the Army. *Id.* Indeed, the IEP Team also highlighted the “possibility of early re-admittance [to School] in August 2019” for Student upon his successful completion of the Expulsion Program. *Exhibit A*, p. 27; *Exhibit J*, p. 11.
10. The Amended IEP remained otherwise unchanged from its previous version. *Exhibit A*, pp. 30-41. For example, the IEP Team did not alter the statement of measurable annual goals designed to meet Student’s needs in mathematics to improve functional math independence skills; in communication to improve receptive and expressive language skills; in reading to improve functional reading skills; and in social/emotional wellness to be able to evaluate how decision-making skills improve academic performance and social situations. *Id.* at pp. 35-36. Nor did the IEP Team, when adding to the service delivery statement, remove already-existing text related to the provision of special education services at School as this section still reads in part that “[Student] has been enrolled in a special education reading intervention class (ILC) and a special education math intervention class (ILC) with a licensed special education teacher for 94 minutes every other day in order to receive direct instruction in reading comprehension skills and basic math skills.” *Id.* at p. 39. It continues with: “[i]dentified services will be provided by staff with expertise in [Student’s] specific area(s) of need.” *Id.*
11. The IEP Team did not modify the Amended IEP’s prior written notice section, as it still provides in part that “[Student’s] needs and goals can best be met within the ILC and Effective Education classes . . .” and that “[Special Education Teacher] talked about how [Student] can come to the ILC classroom anytime he feels the need.” *Id.* at p. 40. The SCO finds that this particular prior written notice pertains to an IEP annual review of September 10, 2018, and that District did not provide Parents with any further prior written notice related to the service modifications made to the Amended IEP on March 8, 2019. *Id.* at p. 24; *Exhibit C*.
12. The IEP Team also did not adjust the statement related to frequency of services. *Exhibit A*, p. 39. The Amended IEP’s service minute grid details: 675 minutes per week of direct specialized instruction from a special education teacher outside of general education, 188 minutes per

week of direct specialized instruction from a special education teacher inside general education, 180 minutes per week of specialized social/emotional instruction from a special education teacher outside general education, and 160 minutes per month of speech/language services from a speech language pathologist outside general education. *Id.* As these service minutes were not changed, the SCO finds that they correspond to instruction Student received at School, with each academic day there lasting 4.8 hours, totaling twenty-four weekly hours. *Exhibit K*, pp. 1-2. The 675 weekly minutes of direct specialized instruction refer to Student’s English and math instruction within the ILC setting. *Id.* The description of Student’s placement inside general education “40% to 79% of the time” provides that all of these “service minutes have been recommended due to the data showing [his] need for supported instruction in math, English and social/emotional class.” *Exhibit A*, p. 40.

13. Secondary Special Education Director explained to the SCO that it is District’s “practice,” during situations involving the “short-term interim process of expulsion,” to keep the service minute grid “intact” such that an IEP may be implemented upon a student’s return to his or her neighborhood school. *Interview with Secondary Special Education Director*. In Student’s case, Secondary Special Education Director added, the IEP Team had also recognized that it was slated to reconvene in September 2019 for a triennial reevaluation. *Id.*; *Exhibit A*, p. 30.
14. In terms of the amount of anticipated services, though not memorialized in writing, the IEP Team’s discussion highlighted the fact that the specialized ILC curriculum would be provided to Student at the Expulsion Program two hours each day, from 1:30 p.m. to 3:30 p.m., for five days per week. *Interviews with Secondary Special Education Director, Special Education Teacher, and Parents*. As for the projected date for the beginning of the services, and anticipated duration, though not documented in writing, the SCO finds that Student attended the Expulsion Program from March 27, 2019 through May 21, 2019. *Interview with Parents*.
15. After the March 8, 2019 IEP meeting, School Psychologist consulted with Student and his father at the Expulsion Program about educational and behavioral expectations, in addition to parameters for early re-admittance as set forth by Superintendent. *Interviews with School Psychologist and Parents*. This March 26, 2019 intake meeting also included a conversation about the circumstances leading to Student’s expulsion, as well as confirmation that he would participate in the Expulsion Program for a total of ten hours each week across five days. *Id.* Between the March 8, 2019 IEP meeting and Student’s entry into the Expulsion Program, he received homebound educational programming. *Exhibit J*, p. 10. With the Expulsion Program set to receive Student on March 27, 2019, the SCO now turns to Parents’ Amended IEP implementation claims, with the first involving the related service of special transportation.

C. The Expulsion Program: Transportation Services

16. The Amended IEP specifically provides that Student “requires special transportation due to safety and supervision and monitoring . . . [and] special transportation while attending

[Expulsion Program].” *Exhibit A*, p. 34. The SCO finds that District did not provide transportation services to Student on March 27, 2019, and that as a result, he missed the full first day of instruction at the Expulsion Program. *Interview with Parents; Exhibit B*, pp. 45-48. After driving Student to the Expulsion Program the next day, March 28, 2019, Student’s father notified Secondary Special Education Director that transportation had not been provided. *Interview with Parents; Exhibit 2*. The SCO finds that while Special Education Teacher submitted a transportation request form on March 11, 2019, she inadvertently requested services for 2019-2020, and not the current academic year. *Exhibit B*, pp. 15-17, 45-48.

17. On Friday, March 29, 2019, Student did not require transportation services as he attended a civil court hearing on other matters related to his educational programming, and thus he was excused from attending the Expulsion Program on this date. *Interview with Parents; Exhibit I*. Following the weekend of March 30-31, 2019, Student received transportation to and from the Expulsion Program on April 1, 2019. *Interview with Parents; Exhibit B*, pp. 1-2. The SCO finds District satisfied its transportation obligation for the balance of Student’s time with the Expulsion Program, and now considers Parents’ second Amended IEP implementation claim concerning a reduction in service minutes during Student’s expulsion. *Interview with Parents*.

D. The Expulsion Program: Specialized Instruction

18. With an emphasis on academic instruction in mathematics and language arts, the Expulsion Program offers students an educational setting with small group and one-to-one sessions. *Interviews with School Psychologist and Math Teacher*. As determined by the IEP Team on March 8, 2019, Special Education Teacher provided the Expulsion Program with the remainder of Student’s core ILC curriculum. *Interview with Special Education Teacher; Exhibit F*, p. 1. She collected ILC science, ILC social studies, and ILC English materials from teachers at School, and she selected ILC math curriculum from her lesson plans as she had taught this subject to Student at School prior to his expulsion. *Interview with Special Education Teacher*. However, she did not recall specifics relating to the exact instruction provided to her by ILC teachers in the areas of science, social studies, and English as she “just brought those over” to the Expulsion Program. *Id.* Special Education Teacher delivered the entirety of the ILC curriculum to the Expulsion Program at one time, and recollected it after May 21, 2019. *Id.*
19. The ILC math textbook and worksheets Special Education Teacher provided to the Expulsion Program focused primarily on pre-algebra, to include study in inequalities and equations, integers, percentages, fractions, decimals, and mixed numbers. *Interviews with Special Education Teacher and Math Teacher*. Math Teacher, now in his fifteenth year of instruction at the Expulsion Program, indicated that the curriculum was “structured in degrees of difficulty to gauge baseline and became more progressively challenging.” *Interview with Math Teacher*. Math Teacher, based on a review of the coursework, added that it “was fitting for [Student’s] ability,” and that Student “demonstrated an impressive ability to work independently.” *Id.* When Student needed assistance, he would approach Math Teacher. *Id.*

20. Student was assigned to Math Teacher's classroom upon his 1:30 p.m. arrival to the Expulsion Program, at which time Student would retrieve his materials and "set up his work station." *Id.* A morning group of middle school and ninth grade students remained in the classroom until their dismissal at 2:00 p.m., and thereafter Student, with up to three other high school students in the classroom, was under the instruction of Math Teacher until 2:45 p.m. *Id.* As corroborated by Student's testimony during the March 29, 2019 civil court proceeding, Math Teacher was able to provide one-to-one instruction for Student as necessary, often times checking in with him to ensure that he understood the math work. *Id.*; *Exhibit I*, p. 5. Math Teacher did not grade the coursework, as he was told only to collect and return it to School at the end of the semester, but noted it was "impressive [Student] was willingly doing work and making progress . . . when he could have strayed off task." *Interview with Math Teacher.*
21. District did not provide the SCO with a progress monitoring report for the math ILC curriculum completed by Student while at the Expulsion Program to show his performance as it relates to the Amended IEP's annual mathematics goal (demonstrating "improved participation across his school and community environments in his functional math independence skills from 4 points to 12 points as measured by scoring rubric"). *Exhibit A*, p. 35; *Exhibit E*. Special Education Teacher "happened to run into [Math Teacher]" while she was at the Expulsion Program for alternate assessments, and "[Math Teacher] let her know [Student] was on pace and working hard on math he had to complete." *Interview with Special Education Teacher.*
22. At 2:45 p.m., Student transitioned to English Teacher's classroom. *Interviews with Math Teacher and English Teacher.* English Teacher, now in her fourth year at the Expulsion Program, maintains a special education license and, like Math Teacher, accommodated one-to-one instruction. *Interview with English Teacher.* The ILC English curriculum received by the Expulsion Program included a novel, and corresponding comprehension questions. *Interviews with Special Education Teacher and English Teacher; Exhibit F*, p. 1. Student summarized each chapter of the novel in writing after reading up to three chapters each day. *Interview with English Teacher.* English Teacher answered Student's questions about the book as necessary, and consistently "checked in with him to make sure he understood exactly what he was supposed to do." *Id.* She also certified that Student was "consistently reading and writing," but added that she "did not really read what he was writing[.]" and that she was "just told that [Student] was to come and work in the room and they would answer his questions." *Id.* She also indicated he could "pick what he wanted to work on" at times. *Id.*
23. District did not provide the SCO with a progress monitoring report for the English ILC curriculum completed by Student while at the Expulsion Program to show performance as it relates to the Amended IEP's annual reading goal (demonstrating "improved participation across his school and community environments in his functional reading independence skills from 9 to 15 points as measured by the scoring rubric"). *Exhibit A*, p. 36; *Exhibit E*.

24. English Teacher said Expulsion Program staff had access to the BIP and the Amended IEP, and described to the SCO an understanding of Student's unique needs, annual goals, and accommodations. *Interview with English Teacher*. Through her observations, Student did not demonstrate any work avoidance or refusal. *Id.* English Teacher described Student as engaged and positive, noting that he enjoyed participating with peers in a ten-minute group activity as part of the Expulsion Program's traditional English instruction. *Id.* The open-ended discussion involved English Teacher creating statements related to a short story, and students delivering an oral opinion as to whether they agreed or disagreed with these statements. *Id.*
25. In terms of the ILC science and ILC social studies curriculum and textbooks provided to the Expulsion Program, both Math Teacher and English Teacher supported Student by assuring he completed all of his assignments. *Interviews with Math Teacher and English Teacher*. Neither provided substantive instruction in these areas, but if there was a question from Student, they had the option of contacting School's ILC teachers for assistance. *Id.* While at times Student "was given latitude" in terms of the content he chose to focus on, Student was always completing work and never exhibiting off-task behavior. *Interview with Math Teacher*.
26. As for speech/language services, these were not provided to Student despite the Amended IEP's service delivery statement providing that "[Student] will receive 160 minutes of speech/language therapy outside of his general education setting to address receptive and expressive language deficits." *Exhibit A*, p. 39; *Response*, p. 3. District did not provide the SCO with progress monitoring data to show Student's performance relating to the Amended IEP's annual communication goal that: "[g]iven instruction and modeling during structured tasks, [he] will improve receptive and expressive language skills as demonstrated by producing complex sentence structures in a written language sample as evidenced by increasing from 17% (1/6 consecutive sentences) to 30%." *Exhibit A*, p. 36; *Exhibit E*.
27. Finally, School Psychologist, who has spent fourteen of his twenty years with District at the Expulsion Program, worked one-to-one with Student each Tuesday for a minimum of thirty minutes to support his social/emotional wellness goal. *Interview with School Psychologist*. The work centered on improving decision-making, and the ability to manage peer pressure as Student had "identified that as a major stumbling block." *Id.* School Psychologist used "role playing for various scenarios" as a strategy, for instance asking Student what he might do if former friends who abused drugs asked him to get together over the lunch hour. *Id.* Student provided School Psychologist with concrete reasons to avoid these situations, such as telling these peers that he needs to meet with his case manager. *Id.* And while the Expulsion Program served as a "natural buffer" to some of this peer pressure, Student also identified a series of staff he would lean on to avoid unwanted peer pressure at School. *Id.*
28. Student also acknowledged boredom and depression as challenges, but reported to School Psychologist that concentrating on the Expulsion Program and private therapy, as well as avoiding friends with whom he found trouble, were helping him to overcome these issues. *Id.* Student's private therapy focused on substance abuse treatment because, as detailed in

state-level complaint 2019:510, his expulsion entered after a third offense violation of District's Alcohol and Other Drug Use by Students policy. *Id.*; *Exhibit J*, pp. 6-7. Consistent with the condition that Student complete substance abuse treatment prior to consideration of early re-admittance to School, School Psychologist collaborated with the private therapist. *Interview with School Psychologist*. Though not an addiction counselor, School Psychologist received periodic updates from the private therapist, and assisted Student through the goal of identifying three reasons that he abused substances, and three strategies for refusal. *Id.*

29. The SCO finds, based on School Psychologist's specificity in terms of the frequency and the nature of services provided, and the fact his strategies targeted related goal objectives, that Student made progress in terms of the social/emotional annual goal of being "able to analyze how decision making skills improves academic performance and social situations from 3 to 6 as measured by the SEL rubric." *Exhibit A*, p. 36. As for the Amended IEP's stated objectives, Student also evaluated "strategies to promote school success[,] identified "which adults he can come to for support at school[,] and through role play was "able to brain storm solutions and identify the consequences associated with them in selected scenarios." *Id.* at p. 37.
30. School Psychologist believes the support and strategies he designed enabled Student to make progress because, not only was Student a "willing participant" in private therapy, but Student also successfully submitted random urine samples without the presence of any illegal substances. *Id.* The first test occurred immediately following the intake meeting on March 26, 2019, at which time Student was "clean." *Id.* School Psychologist stated that a consistent topic of conversation with Student involved these samples, and that Student "without flaw" demonstrated compliance in this respect. *Id.* While Parents acknowledged that Student had "done what he is supposed to do at the [Expulsion Program]," to include urine testing, they asserted apprehension with execution of the Amended IEP, and with whether District was able to "jam all [the service minutes] in" over the course of two hours. *Interview with Parents*. Student described the Expulsion Program environment to Parents as a setting where "he does his own thing[,] and added that he was typically "given . . . a piece of paper" to work on. *Id.*
31. In amending Student's educational programming at the March 8, 2019 IEP meeting, though the IEP Team discussed ensuring access to general education through supports and meeting Student's unique needs and goals, the IEP Team did not specifically state the amount of services to be provided at the Expulsion Program within the Amended IEP. *Interview with Secondary Special Education Director; Exhibit A*, pp. 27-41. School Psychologist, as "lead" for the Expulsion Program, crafted Student's schedule within the framework of the two-hour programming window. *Interviews with School Psychologist and Secondary Special Education Director*. Apart from the information identified in the Amended IEP, Parents did not receive further documentation pertaining to the amount or frequency of services. *Id.* Student completed the Expulsion Program on May 21, 2019, missing only two additional days of school apart from the civil court hearing on account of illness, and District then conducted an early reentry meeting on May 22, 2019. *Interviews with Parents and School Psychologist*.

E. Student's Eligibility for Early Reentry to School

32. Based on Student's participation in the Expulsion Program, and adherence to all expulsion criterion established by Superintendent, District granted Student early readmission to return to School on August 12, 2019. *Interviews with Secondary Special Education Director, Special Education Teacher, and School Psychologist*. One such condition was that Student partake "in an individual alcohol and/or drug evaluation assessment conducted by a certified alcohol/drug treatment professional . . ." *Exhibit 8*. As part of the May 22, 2019 reentry meeting, School Psychologist also "hammered home" the point that Student remains on school probation, and that as a consequence any type of suspension would result in Student having to fulfill the remainder of the expulsion period. *Interview with School Psychologist*.
33. Student's exit from the Expulsion Program on May 21, 2019 marks a full progression through the relevant portion of the timeframe accepted for investigation, and it is with the totality of these findings that the SCO advances to analyze whether District implemented the at-issue elements of the Amended IEP, and if not, whether such failure amounts to a denial of a FAPE.

V. CONCLUSIONS OF LAW

Based on the FINDINGS OF FACT set forth above, the SCO enters the following CONCLUSIONS OF LAW:

Conclusion to Allegation No. 1: District's failure to provide Student with the amount of direct, specialized instruction listed in the Amended IEP, from March 27, 2019 through May 21, 2019, constitutes a substantive violation of the IDEA and denial of a FAPE under 34 C.F.R. § 300.323.

A. IEP Implementation under the IDEA

Parents contend that District deprived Student of a FAPE while he attended the Expulsion Program. *Complaint*, pp. 7-8. Under the IDEA, school districts are required to provide eligible students with disabilities a FAPE by offering special education and related services individually tailored to meet the student's unique needs, and delivered in conformity with an IEP developed according to the IDEA's requirements. 34 C.F.R. § 300.17; ECEA Rule 2.19. A child's IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982)). To that end, the U.S. Supreme Court concluded an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at p. 999.

The "purpose of an IEP is to embody the services and educational placement or placements that are planned for the child." *N.E. ex rel. C.E. v. Seattle Sch. Dist.*, 842 F.3d 1093, 1096-97 (9th Cir.

2016). A school district must implement a child's IEP with all required components. 34 C.F.R. § 300.323(c). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of his or her specific responsibilities related to implementing that IEP, as well as the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 C.F.R. § 300.323(d). This duty includes confirming that "as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2).

Where the definition of a FAPE specifically references the provision 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 denial of a 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).

Nevertheless, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *T.M. v. District 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); *Van Duyn*, 502 F.3d at 822 (holding a "minor discrepancy" between services provided and services required does not give rise to denial of a FAPE). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

The SCO first addresses Parents' position that District failed to implement a related service, namely special transportation described in the Amended IEP, in March of 2019. *Complaint*, p. 8.

B. Implementation of Student's Transportation Services

Transportation to and from school is a related service that must be included in a student's IEP if the service is required for the student to benefit from special education. 34 C.F.R. § 300.34(a). A child's IEP team is responsible for deciding "if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented." *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009) (citing 34 C.F.R. §§ 300.107 and 300.117).

A substantial delay in implementing a student's transportation can constitute an IDEA violation if it interferes with the student's ability to derive an educational benefit. *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 274 (D.D.C. 2011) (holding that a school district's delay in arranging transportation amounted to a material implementation failure where it caused a nine-year-old student to miss three weeks of a four-week extended school year program); *See also In re: Student with a Disability*, 63 IDELR 178 (SEA VA 2013) (ruling that, while a school district's failure to provide transportation for three weeks culminated in denial of a FAPE, compensatory relief was not appropriate because there was no permanent loss of educational benefit); *District of Columbia Pub. Schs.*, 110 LRP 22777 (SEA DC 11/23/08) (ordering compensatory education for a student who missed 14 days of his extended school year program due to a lack of transportation).

In the present case, FF #6 shows the IEP Team determined on March 8, 2019 that transportation was required to assist Student to benefit from special education and related services while at the Expulsion Program. Specifically, the Amended IEP at FF #16 provides that Student "requires special transportation due to safety and supervision and monitoring . . . [and] special transportation while attending [Expulsion Program]." It is undisputed, based on FF #5 and #16-17, that District did not provide Student with transportation for a total of three days based on a "clerical error" made by Special Education Teacher while requesting services on March 11, 2019.

Although Student missed the full two hours of instruction at the Expulsion Program on March 27, 2019 given District's failure to provide transportation, Student's father furnished transportation for him to and from the Expulsion Program on March 28, 2019. Student's presence at the Expulsion Program was excused on Friday, March 29, 2019, and District ensured transportation services were available by Monday, April 1, 2019. Finding that District failed to implement this related service requirement of the Amended IEP, the SCO now considers whether it was material.

The SCO recognizes that District had nineteen calendar days between the March 8, 2019 IEP meeting and the March 27, 2019 Expulsion Program start date, during which time Student continued to receive homebound educational programming, to establish timely transportation, and that Student's father had to notify Secondary Special Education Director of District's mistake. In part because Student's father overtook District's transportation duty on March 28, 2019, Student missed only one full day of instruction at the Expulsion Program. These facts are more akin to a minor discrepancy in services than the substantial delay detailed in *District of Columbia Pub. Schs.* and *Wilson*. Still, a "showing of educational harm is not required to demonstrate that the failure to implement the IEP was material." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). "Rather, it is sufficient to compare the services required by the IEP to the services actually provided." *Id.* (citing *Holman v. District of Columbia*, 153 F.Supp.3d 386, 390 (D.D.C. 2016) (stating "[t]he 'crucial measure' under the materiality standard is the 'proportion of services mandated to those provided' and not the type of harm suffered by the student")).

In this instance, based on the dates of attendance at FF #14, the Amended IEP charged District with transporting Student to and from the Expulsion Program for forty school days. District,

including March 29, 2019 as transportation services were unavailable even had Student not been excused for the civil court proceeding, disregarded this related service obligation for three days. In comparing the proportion of services required to those provided, District made transportation available to Student for 92.5% of the time he attended the Expulsion Program. The SCO finds and concludes, after a full consideration of all individual circumstances here, that District's failure was not a "material" deviation from Student's Amended IEP. *A.P.*, 370 Fed. Appx. at 205. District thus did not deprive Student of a FAPE in this regard. *Van Duyn ex rel. Van Duyn*, 502 F.3d at 822.

The SCO next shifts to the claim that District failed to deliver specialized instruction consistent with the Amended IEP while Student was present at the Expulsion Program. *Complaint*, pp. 7-8.

C. Implementation of Student's Specialized Instruction

As a vehicle for driving the provision of a FAPE, an IEP "embodies a binding commitment and provides notice to both parties as to what services will be provided to the student during the period covered by the IEP." *M.C. v. Antelope Valley Union High School District*, 858 F.3d 1189, 1197 (9th Cir. 2017). If a "parent is unaware of the services offered to the student—and, therefore, can't monitor how these services are provided—a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP." *Id.* at p. 1198.

"A failure to include the required specificity as to the programming offer would render 'the IEP useless as a blueprint for enforcement' and infringe on parental participatory rights which include the development and the enforcement of an IEP." *Pittsburg Unified School District*, 118 LRP 35364 (SEA CA 8/13/18) (quoting *M.C.*, 858 F.3d at 1199). Some required IEP components are a "projected date for the beginning of the services and modifications . . . and the anticipated frequency, location, and duration of those services and modifications." 34 C.F.R. § 300.320(a)(7). Although the IDEA does not expressly require the IEP to specify the amount of services in terms of hours and minutes, precision is the best practice to the extent the nature of a student's disability and needed services permits quantification in terms of hours and minutes on a daily basis. *Letter to Copenhaver*, 21 IDELR 1183 (OSEP 1994); *See also Okaloosa County Sch. Dist.*, 114 LRP 53775 (SEA FL 06/24/14) (determining a school district violated IDEA's procedural requirements when it failed to specify the duration of a student's occupational therapy sessions).

Essentially, an IEP must include sufficient information about the amount of services that will be provided so a school district's level of commitment to the student will be clear to parents and providers. *71 Fed. Reg. 156, 46667* (August 14, 2006). Otherwise, an IEP team's failure to set forth the start date, amount, and duration of services can create questions as to whether a school district implemented certain IEP provisions. *Rosemount-Apple Valley-Eagan Indep. Sch. Dist. No. 196*, 51 IDELR 143 (SEA MN 2008); *Okaloosa County Sch. Dist.*, 114 LRP 53775 (SEA FL 06/24/14). Along these lines of allowing parents to participate in their child's educational service decisions in an informed way, school districts must provide prior written notice within "a reasonable time"

before proposing to initiate or change a child's "provision of FAPE." 34 C.F.R. § 300.503(a). Verbal notice is not sufficient. *El Paso County School District 2*, 113 LRP 44602 (SEA CO 8/15/13).

In this case, based on FF #6-15, the SCO concludes that the Amended IEP as written does not include sufficient information about the amount of services that were to be provided to Student while at the Expulsion Program. First, the Amended IEP does not contain a projected date for the beginning of the modified services. Second, the Amended IEP does not include the anticipated frequency or duration of the modified services. Third, although FF #14 shows the IEP Team discussed that modified services would be offered at two hours each day, for five days per week, there is no statement to this effect memorialized within the Amended IEP. Fourth, despite service modification, the Amended IEP's service delivery statement reflecting the type and frequency of speech/language services, specialized instruction, and social/emotional instruction did not change. Finally, the IEP Team neither altered the Amended IEP's prior written notice contents, nor provided Parents with prior written notice of the changes made to Student's provision of a FAPE, for the interim Expulsion Program period, at the March 8, 2019 IEP meeting.

Precision was not the practice here because the only guidance in the service delivery statement, which the IEP Team simply added beneath existing information pertaining to special education services provided to Student while he had attended School, was that "specialized instruction in English, math, science, and social studies" would be delivered to the Expulsion Program, and that he would "receive mental health support . . . through the FBA/BIP." Thus, as Parents could not "monitor how these services are provided—a FAPE has been denied . . ." *M.C.*, 858 F.3d at 1198. Also within the purview of parental participation, the failure to include all required components within the Amended IEP, and the lack of prior written notice, constitute procedural violations of 34 C.F.R. §§ 300.320(a)(7) and 300.503(a). These two violations collectively constitute denial of a FAPE because they both infringed on Parents' opportunity to participate in the IEP process and contributed to a loss of educational opportunity for Student, explained more fully below. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy School District No. 20*, 538 F.3d 1306 (10th Cir. 2008).

In terms of implementation, as recognized in *Rosemount-Apple Valley-Eagan Indep. Sch. Dist. No. 196*, 51 IDELR 143 (SEA MN 2008) and applied to the instant case, an IEP team's failure to set out the start date, amount, frequency, and duration of services raises the question of whether a school district implemented certain IEP provisions. Here, FF #6-13 show that the IEP Team neither changed the Amended IEP's service minute grid nor recorded District's "practice" of not amending the statement related to frequency of services during a "short-term interim process of expulsion." The sum of direct special education instruction listed in the Amended IEP's service minute grid is 1,043 weekly minutes, or 17.38 hours per week, and 160 monthly minutes, or 2.67 monthly hours. According to FF #7 and #14, though not set forth in writing, Student was to receive 600 weekly minutes of "specialized instruction," or ten hours per week, at the Expulsion Program. It is therefore evident that District failed to implement the amount of specialized instruction listed in the Amended IEP given its "practice" of leaving an earlier, inapplicable version of the service delivery statement and service minute grid untouched.

Based on the services required by the Amended IEP, even excluding the 160 monthly minutes of speech/language therapy, the SCO concludes that this failure was a “material” deviation from the Amended IEP given the 7.38 hour difference in weekly specialized instruction. *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Consequently, the SCO concludes that this violation amounts to denial of a FAPE for Student. *Van Duyn ex rel. Van Duyn*, 502 F.3d at 822.

The SCO has resolved each of Parents’ implementation allegations, however, this matter requires additional analysis regarding the offer of a FAPE. Precisely, District’s “practice” of declining to amend certain IEP sections for students entering the Expulsion Program drives a concern regarding the provision of appropriate services not only for Student, but also for all other IDEA-eligible children similarly situated in the Expulsion Program. 34 C.F.R. § 300.151(b); *See also Mesa County Valley School District 51*, 116 LRP 16255 (SEA CO 2/9/16) (ordering a school district, where it failed to implement a student’s IEP, to “review the IEPs of all students attending its [therapeutic day program] to ensure that students are receiving the services in accordance with their IEPs”).

D. Provision of a modified FAPE for Student

During a period of expulsion, an IDEA-eligible child continues to be entitled to receive a FAPE. 34 C.F.R. § 300.530(d)(1). The special education and related services such a child receives must “enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.” *Id.* However, school districts need not replicate all services and instruction that a student received prior to his removal to an Interim Alternative Educational Setting (“IAES”). *See, e.g., Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009); *Troy City Bd. of Educ.*, 27 IDELR 555 (SEA AL 1998); *Delaware Dep't of Educ.*, 53 IDELR 340 (SEA DE 2009). This is because the U.S. Department of Education recognizes a modified FAPE standard germane to such circumstances:

While children with disabilities removed for more than 10 school days in a school year for disciplinary reasons must continue to receive FAPE, we believe the [IDEA] modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum and to progress toward meeting the goals set out in the child's IEP.

71 *Fed. Reg.* 156, 46716 (August 14, 2006); *See also Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009) (“An IAES must be selected so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to

progress toward meeting the goals set out in the child's IEP"). An IEP team is responsible for deciding what services are needed to provide a FAPE to a child with a disability who was expelled for conduct determined not to be a manifestation of a disability. 34 C.F.R. § 300.530(d)(5).

The U.S. Department of Education does not explicitly address the precise contours of programming required for properly expelled students with disabilities, and thus the extent to which educational services must be provided, and the type of instruction to be furnished, depend on the length of the removal, the magnitude of previous removals, and the child's needs and educational goals. *Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009) ("What constitutes an appropriate IAES will depend on the circumstances of each individual case."); *See also, Freeport Pub. Schs.*, 26 IDELR 1251 (SEA ME 1997) (finding that a student removed to an IAES still had access to the general education curriculum through tutoring based on his regular education classes); *Cumberland Sch. Dist.*, 35 IDELR 269 (SEA WI 2001) (determining that a student was able to access the general curriculum in an IAES because his special education teacher designed the lesson plans used by the teacher in the IAES program).

In *Freeport Pub. Schs.*, although the school district provided a student with tutoring services that enabled him to continue to participate in the general curriculum while at an IAES, the IAES itself "was inappropriate in that it failed to allow the student to continue to receive services and modifications to permit him to meet his IEP goals." *Id.* Conversely, the IAES in *Cumberland Sch. Dist.* was designed to enable the student to make progress in the general curriculum. Specifically, an administrative law judge reasoned, the school district hired an instructor, who had "taken many special education classes," to teach the student at the IAES. *Id.* This instructor was "under the supervision of the Student's special education teacher who designed the curriculum to meet all the Student's general curriculum and IEP goals." *Id.* Additionally, the special education teacher was scheduled to be at the IAES for at least one of the seven hours per week to supervise the instructor hired by the school district. *Id.* The SCO concludes that the facts in the instant matter are more akin to those of *Freeport Pub. Schs.* than those detailed in *Cumberland Sch. Dist.*

The SCO acknowledges that District here was not required to replicate all services and instruction Student received at School prior to his removal to the Expulsion Program. Still, in order to enable Student to continue to participate in the general curriculum and to progress toward meeting the goals set out in the Amended IEP, District was required to provide "specially designed instruction . . . to meet the unique needs of [Student]." 34 C.F.R. § 300.39(a)(1). As defined by the IDEA:

Specially designed instruction means adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instruction . . . [t]o address the unique needs of the child that result from the child's disability; and [t]o ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3). District here did not provide Student with specially designed instruction. Special Education Teacher simply delivered, in bulk, ILC curriculum for English, math, science, and social studies to the Expulsion Program. The IEP Team did not discuss how this coursework would be allocated in terms of frequency or duration as Student's Expulsion Program schedule was designed by School Psychologist. Both Math Teacher and English Teacher were advised only to collect, and not assess or otherwise grade, the ILC curriculum as Student completed it at the Expulsion Program. The SCO learned that the worksheets were returned to School at the May 22, 2019 reentry meeting, but did not receive any specifics in terms of how the work was graded, or how Student performed substantively. Moreover, without any progress monitoring data, the SCO cannot measure Student's progress, or regression, under the IDEA's modified FAPE standard.

Additionally, English Teacher is the only Expulsion Program instructor holding a special education license and Student spent seventy-five of each one hundred and twenty minute school day with Math Teacher. Neither Math Teacher nor English Teacher designed the ILC curriculum, and District did not otherwise allocate staff with related special education experience to the Expulsion Program in order to implement a specialized instruction tailored to Student's unique needs and Amended IEP goals. Special Education Teacher visited the Expulsion Program only to administer alternate assessments, and not to supervise Math Teacher or English Teacher. Math Teacher and English Teacher told the SCO that Student "was given latitude" in terms of work selection, and that Student could "pick what he wanted to work on." They "checked in with [Student] to make sure he understood exactly what he was supposed to do." However, English Teacher informed the SCO that she "did not really read what [Student] was writing[,]" and that she was "just told that [Student] was to come and work in the room and they would answer his questions." For these reasons, this case more closely tracks *Freeport Pub. Schs.* in that the Expulsion Program was not appropriate because it did not allow Student to make progress in the general curriculum.

When viewed as a whole, the SCO concludes that District's provision of ILC curriculum worksheets and textbooks to Math Teacher and English Teacher at the Expulsion Program does not satisfy IDEA's definition of specialized instruction under 34 C.F.R. § 300.39(b)(3). Even assuming that Special Education Teacher's delivery of ILC curriculum to the Expulsion Program did meet this definition of specialized instruction, the modified FAPE standard requires that a child progress toward meeting goals set out in the IEP, and this SCO is unable to measure Student's progress on three of his four annual goals between March 27, 2019 and May 21, 2019 because District did not document his performance through monitoring reports. This is denial of a FAPE. 34 C.F.R. § 300.530(d)(1). In summary, given the degree to which a FAPE was denied, "Student is entitled to compensatory services." *Colorado Department of Education*, 118 LRP 43765 (SEA CO 6/22/18).

E. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Many courts have rejected a "cookie-cutter" approach to compensatory education in which awards are based solely on the hours of services missed. *Id.* at p. 523; See also *Colorado Department of Education*, 118 LRP 43765 (SEA CO 6/22/18) (noting that "compensatory education is not an hour-for-hour calculation"). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package, crafted in consultation with CDE Specialist and in consideration of this legal framework, in order to deliver Student services that he should have received while attending the Expulsion Program pursuant to the IDEA's guarantee of a FAPE.

In this case, FF #14 demonstrates that Student was enrolled at the Expulsion Program for a total of forty school days. His attendance was excused on March 29, 2019 to attend a legal proceeding, and for two additional school days on account of illness. Including these three excused absences, but noting the missed school day on March 27, 2019 given a lack of transportation, Student should have been present at the Expulsion Program for a total of thirty-seven school days, or 5.3 total weeks. A full week of instruction at the Expulsion Program totaled ten hours, and a full week of instruction at School totaled twenty-four hours. Compensatory education is not a minute-for-minute reimbursement, but the SCO sets forth this information given the unique circumstances here. First, District did not offer any concrete measure of progress attributable to Student's annual goals. Second, the only frequency of services documented within the Amended IEP are applicable to Student's offer of a FAPE at School, available there to Student prior to his expulsion and removal to the Expulsion Program. Third, Student's expulsion gave rise to a modified FAPE. As such, an appropriate award to make up for services missed shall be based largely on a qualitative approach, especially absent data on any regression suffered by Student.

Student did not receive any of the 160 monthly minutes of speech/language services described in the Amended IEP's service delivery statement and service minute grid. It was designated within the service delivery statement that such services were needed to address his "receptive and expressive language skills" needs. Also, Student's annual communication goal relates to improving "receptive and expressive language skills." Without any progress monitoring data, the SCO cannot determine Student's progress toward meeting this goal. Consequently, while declining a minute-for-minute award based on Student's full 5.3 weeks of Expulsion Program attendance, the SCO concludes that Student is entitled to 160 minutes of compensatory education services described within the Amended IEP to remedy this denial of a modified FAPE.

The SCO also cannot ascertain Student's progress toward meeting the Amended IEP's mathematics and reading goals without progress monitoring information. Plus, even assuming

this data was available, the SCO concluded that the instruction was not specialized. These areas are crucial to Student's provision of a FAPE where the Amended IEP states, in relation to Student's previous placement, that "service minutes have been recommended due to the data showing [his] need for supported instruction in math, English and social/emotional class." Thus, an award of compensatory education services for mathematics and reading shall be made in an amount proportionate with Student's previous ratio of weekly specialized instruction minutes, 675, to total weekly hours of instruction at School, twenty-four. At School, services in math and reading accounted for 46.87 percent of Student's direct, weekly specialized instruction. At the Expulsion Program, 46.87 percent of the ten hours of weekly instruction is 4.69 hours. Consequently, in multiplying 4.69 hours across 5.3 weeks of Expulsion Program attendance, and rounding up to the nearest whole number, the SCO concludes that Student is entitled to a total of twenty-five hours of compensatory education services to remedy this specific denial of a modified FAPE.

As for Student's social/emotional wellness goal, as delineated at FF #27-30, School Psychologist's instruction enabled Student to continue to participate in the general education curriculum, and to make progress in this area. A compensatory education award is not necessary in this respect.

VI. REMEDIES

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

- a. Failing to provide prior written notice, in violation of 34 C.F.R. § 300.503(a).
- b. Failing to include required contents within an IEP, in violation of 34 C.F.R. § 300.320(a)(7).
- c. Failing to implement an IEP, in violation of 34 C.F.R. § 300.323.

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

1. By **Friday, July 26, 2019**, District shall submit to CDE a proposed corrective action plan ("CAP") that adequately addresses the three (3) violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. Training with Secondary Special Education Director and Special Education Teacher, in addition to any other School staff deemed appropriate by District, on the requirements of 34 C.F.R. § 300.503(a) in accordance with this Decision to address the provision of prior written notice, specifically when and under what circumstances prior written notice is required, and what information prior written notice must contain, no later than **Friday, December 20, 2019**.

- b. Training with Secondary Special Education Director and Special Education Teacher, in addition to any other School staff deemed appropriate by District, on the requirements of 34 C.F.R. § 300.320 in accordance with this Decision to address all required IEP contents, no later than **Friday, December 20, 2019**. This training must also specifically target the requirements related to including a description of how progress toward meeting annual goals will be measured and when periodic reports on the progress of the child will be provided, the projected start date for services and modifications, the anticipated frequency, location, and duration of those services and modifications, and the amount of time to be committed to those services in a service minute grid within an amended IEP.
- c. Evidence that these trainings have occurred must be documented (i.e. training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets, with roles noted) and provided to CDE no later than **Monday, January 6, 2020**. These trainings may be conducted in-person, or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. If the individuals identified in paragraphs 1(a) and 1(b) are no longer employed by District when the training occurs, District may train staff occupying identical roles in order to demonstrate compliance with this remedy.
- d. District must review IEPs for all IDEA-eligible students currently attending, or scheduled to attend in the 2019-2020 academic year, the Expulsion Program to verify that specialized instruction and services are being provided, or that they will be provided, in accordance with these IEPs. This remedy stems from the CDE's obligation to address the "[a]ppropriate future provision of services for all children with disabilities" when it has found a failure to provide appropriate services, consistent with 34 C.F.R. § 300.151(b). District must ensure that IEPs clearly state the various services to be provided so that District's level of commitment to students attending the Expulsion Program will be clear to parents and providers. Evidence that this review has occurred must be documented, and a summary of this review, to include copies of all IEPs reviewed, certification of conformity for compliant IEPs, and any amendments/changes required for noncompliant IEPs, must be submitted to CDE no later than **Friday, August 9, 2019**.
- e. District must develop written procedures regarding its obligations toward IDEA-eligible students who are placed at the Expulsion Program, or another IAES, to ensure that IEPs clearly and accurately reflect the specialized instruction and services to be provided during such placement. District shall submit written procedures to CDE for approval by **Friday, August 9, 2019**. Within **ten (10) days** of ratification by CDE, Secondary Special Education Director must disseminate these written procedures via e-mail to all designated special education case managers District-wide (i.e. to ensure receipt by special education case managers

supervising all grade levels), in addition to any other School or District staff deemed appropriate, and then submit verification of this dissemination to CDE.

- f. CDE will approve or request revisions to the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.
2. Compensatory Education Services for Denial of a FAPE
- a. District shall provide Student with **160 minutes of direct speech and language therapy** outside of the general education setting by **Friday, December 20, 2019**. These compensatory education services shall be provided by a licensed speech and language therapist. To document the provision of these services, District must submit records of service logs to CDE by the second Monday of each month until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
 - i. The IEP Team, in collaboration with the licensed speech and language therapist delivering compensatory education services, shall consistently monitor and assess Student's progress on IEP goals and objectives, to include quantifying Student's rate of improvement/regression and evaluating the effectiveness of this specialized instruction, in order to support Student's expressive and receptive language needs. The specialized instruction must be adjusted as needed to meet Student's unique needs. District shall submit regular reports of Student's progress on IEP goals and objectives by the **second Monday of each month** until the last scheduled compensatory education services have been provided.
 - b. District shall provide Student with **twenty-five (25) hours of direct, individualized instruction in the areas of math and reading** outside of the general education setting by **Friday, December 20, 2019**. To document the provision of these services, District must submit records of service logs to CDE by the second Monday of each month until compensatory services have been completed, but no later than one year following the date of this Decision.
 - i. The IEP Team, in collaboration with the instructors delivering these compensatory education services, shall consistently monitor and assess Student's progress on IEP goals and objectives, to include quantifying Student's rate of improvement/regression and evaluating the effectiveness of this specialized instruction. The specialized instruction must be adjusted as needed to meet Student's unique needs. District shall submit regular reports of Student's progress on IEP goals and objectives by

the **second Monday of each month** until the last scheduled compensatory education services have been provided.

- c. **Within ten (10) days after receiving this Decision**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time period, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents its efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
 - d. District shall submit the schedule of compensatory services to CDE no later than **Tuesday, July 23, 2019**. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents, as well as notify CDE of the change in the appropriate service log.
3. By **Monday, August 26, 2019**, District must convene an IEP meeting with Parents at a mutually convenient time and setting, to review and revise the Amended IEP as necessary in light of Student's triennial evaluation due in September 2019. Evidence that this IEP meeting occurred must be documented by providing a copy of the Notice of Meeting, IEP, and prior written notice to CDE no later than ten (10) days following the IEP meeting. If Parents do not respond to District's efforts to convene an IEP meeting by August 26, 2019, CDE will determine compliance with this remedy in accordance with 34 C.F.R. § 300.322.

CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to verify District's timely correction of the areas of noncompliance. Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Michael Ramirez
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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

VII. CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *Id.*; *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 25th day of June, 2019.

Brandon Edelman, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-9

- Exhibit 1: Amendment to IEP
- Exhibit 2: E-mail dated March 28, 2019
- Exhibit 3: IEP dated September 10, 2018
- Exhibit 6: Summary of October 1, 2018 Incident
- Exhibit 7: Settlement Agreement
- Exhibit 8: Notice of Suspension/Recommendation for Expulsion dated December 5, 2018
- Exhibit 10: District Alcohol or Drug Use Violation, Fourth Offense Form

Response, pages 1-8

- Exhibit A: IEP Documentation
- Exhibit B: Service Logs
- Exhibit C: Prior Written Notice Documentation
- Exhibit D: Notice of Meeting Documentation
- Exhibit E: Grade and Progress Reports
- Exhibit F: Correspondence
- Exhibit G: Witness/Staff List
- Exhibit H: Response Delivery Confirmation
- Exhibit I: March 29, 2019 Hearing Transcript []
- Exhibit J: Final Decision for state-level complaint 2019:510
- Exhibit K: E-mail Correspondence

Reply, pages 1-6

Telephonic Interviews

- Parents: May 21, 2019
- School Psychologist: May 29, 2019
- Special Education Teacher: May 29, 2019
- Secondary Special Education Director: May 30, 2019
- Math Teacher: May 30, 2019
- English Teacher: May 30, 2019