

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

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**State-Level Complaint 2019:561  
El Paso County School District 49**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on September 16, 2019 by the parents (Parents) of a child (Student) identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the SCO determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from September 16, 2018 through September 16, 2019 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether Student has been denied a Free Appropriate Public Education (FAPE) because the El Paso County School District 49 (District):

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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 CFR § 300.1, *et seq.*

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

1. Deprived Parents of meaningful participation in the Individualized Education Program (IEP) process at the April 3, 2019, May 14, 2019 and May 23, 2019 IEP meetings by declining to consider Parents' concerns regarding Student's transition services and placement, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii) and 300.501(b)-(c).
2. Deprived Parents of meaningful participation in the IEP process at the May 14, 2019 and May 23, 2019 IEP meetings when it failed to provide Parent with a copy of its draft IEP proposals for review prior to the IEP meetings, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.322(b) and 300.501(a)-(c).
3. Failed to ensure that the April 3, 2019 IEP meeting included the full participation of one regular education teacher of Student, in violation of 34 C.F.R. § 300.321(a).
4. Failed to provide transition services for Student from September 16, 2018 forward, consistent with 34 C.F.R. §§ 300.43(a)-(b), 300.320(b) and ECEA Rules 2.51 and 4.03(6)(d).

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is a nineteen-year-old currently eligible for special education and related services under the disability category of Autism Spectrum Disorder. *Exhibit A*, p. 81.
2. During the 2018-2019 academic year, Student was enrolled as a student at a high school (School) located within District. *Exhibit A*, p. 75.
3. He is currently enrolled as a part-time student in a District post-secondary transition program (District Transition Program) while also taking courses at Community College. *Interviews with Parent, Transition Coordinator and Transition Teacher*.
4. The instant controversy first developed as Parent began to express concerns at the March 1, 2018 IEP meeting—during Student's junior year of high school—regarding Student's post-high school plans and options for transition programming. *Exhibit A*, p. 41. It continued through the duration of Student's senior year of high school, as Parent objected to the post-secondary options presented to Student as insufficiently tailored to Student's interests. *Interview with Parent; Complaint*. Parent also expressed frustration

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

that Student had not been offered the full range of programming options available to all high school students. *Id.*

5. District offers a variety of programming options to high school students, including vocational courses and programs that allow students to earn college credits, such as Concurrent Enrollment. *Interviews with Special Education Director, Counselor and Case Manager; Exhibit N.* In addition, District Transition Program provides transition services to IDEA-eligible students aged 18-21 and is designed for students with significant gaps in skills related to employment, independent living and community access. *Interviews with Transition Coordinator and Transition Teacher; Exhibit I, pp. 3-4; Exhibit J, pp. 40, 62-63.*
6. Student and Parent were presented with limited post-secondary options, in part because Student did not meet the eligibility requirements for some programming. *Interviews with Parent, Counselor and Case Manager.* Just prior to Student's graduation date, in May of 2019, the IEP team made the decision to hold the diploma while Student completed transition services, and Parent subsequently filed the instant Complaint with the allegations outlined above. *Interviews with Parent, Case Manager and Director of Special Education.*
7. While acknowledging that the investigation is limited to the period of time from September 16, 2018 through September 16, 2019, the SCO notes that this Decision contains findings related to Student's March 1, 2018 IEP and transition plan because both were in effect from September 16, 2018 until February 12, 2019.

#### **B. The March 1, 2018 IEP and Transition Plan**

8. The March 1, 2018 IEP describes Student's needs as assessed through the Oral and Written Language Scales-Second Edition (OWLS II), the Woodcock Johnson IV, the AimsWeb Benchmark in Math and the Childhood Autism Rating Scale, Second Edition-High Functioning Version. *Id.* at pp. 34-38, 41. Student exhibited a need for supports from a paraprofessional in the general classroom environment, the need for indirect and immediate feedback from a speech language pathologist and/or speech language paraprofessional and the need to improve in the areas of math computation and reading comprehension. *Id.*
9. Student's strengths, preferences and interests were assessed through both an interview Student completed with Case Manager and through the College in Colorado Interest Profiler. *Exhibit A, pp. 33, 41.* Among his strengths, Student listed art, music, graphic design, math and science. *Id.* at p. 33. The results of the College in Colorado Interest Profiler revealed that Student prefers to work in artistic and investigative careers. *Id.* at p. 41.
10. With regard to independent living skills, the March 1, 2018 IEP documents that Student had age appropriate skills. *Exhibit A, 42.* When asked about the basis for this finding,

Case Manager stated that she should have documented Student's needs in the area of peer socialization. *Interview with Case Manager.*

11. The March 1, 2018 IEP also reflects that no services were needed in community experiences and that no agency linkages were made. *Exhibit A*, p. 44. According to Case Manager, there were no concerns from the IEP team in the area of community experiences because Student was pursuing Community College. *Interview with Case Manager.*
12. Turning to Student's post-secondary goals, the March 1, 2018 IEP details Student's post-secondary education/training and career employment goals. *Id.* at p. 43. However, these goals are nearly identical. *Id.* The education/training goal reads, "Upon graduating from high school, [Student] will be employed in an art or music career; [Student] will investigate further two areas of employment in the art or music field. Options of the Transition Program are being considered. As part of his goal, [Student] will complete the following Individual Career and Academic Plan (ICAP) milestones through College in Colorado." *Id.* The career employment goal states, "Upon completion of post-secondary education, [Student] will be employed in an art or music career; [Student] will investigate further two areas of employment in the art or music field." *Id.*
13. When asked about the similarity, Case Manager explained that the education/training goal should have described Student's goal of attending Community College following graduation from high school, which was the educational goal discussed during the IEP meeting and consistently expressed by Student. *Interview with Case Manager.*
14. According to Case Manager, Student's post-secondary education/training and employment career goals were developed based on the transition assessment, College in Colorado Interest Profiler, and her interview with Student. *Id.* The ICAP milestones listed with the education goal are generally used in working with students who are pursuing college. *Id.*
15. The SCO now turns to the portion of the March 1, 2018 IEP in which there should be a description of transition services needed to help Student reach his post-secondary goals. The March 1, 2018 IEP does not document the transition services or activities to be provided to Student by adults in the community to promote his progress toward his post-secondary and annual goals. *Exhibit A*, p. 44. Case Manager could not articulate why this section was not completed but indicated that she had not been trained to complete this section of the IEP. *Interview with Case Manager.* Case Manager also stated that the IEPs she developed were peer reviewed and that she and her colleagues all wrote IEPs in a similar fashion without including "specifics in this section." *Id.*
16. Given the above findings, the SCO finds that Student was not receiving transition services aligned with his needs and post-secondary goals. When asked about whether Student

was receiving transition services despite their absence in the IEP, Case Manager stated that they were helping get Student into college, “making sure they were on track individually for him” and developing his courses through School. *Id.* Case Manager went on to describe activities that Student and Parent were completing, including investigating areas of employment, completing the ICAP milestones and researching the District Transition Program. *Id.* Case Manager explained that Student received support in completing these activities. *Id.* She stated that she and a life skills teacher provided support but did not articulate further how Student was supported. *Id.*

17. The transition plan contains a planned course of study that is generally aligned with Student’s needs in social interaction, math computation and reading comprehension. *Exhibit A*, pp. 43-44. It includes English, literature and algebra courses for the stated purpose of helping Student prepare for attending college, as well as courses in graphic design and studio art for the stated purpose of helping student prepare for a career in graphic design. *Id.* The basis for the course of study and post-secondary goals was Student’s expressed interest in attending college. *Interview with Case Manager*. The SCO notes that Student had expressed an interest in graphic design in his March of 2017 IEP, but his career goal had changed in the March 1, 2018 IEP. *Exhibit A*, p. 13, 43. Still, the course of study indicates that some courses were selected to help Student pursue the previous year’s career goal of working in graphic design. *Id.*
18. During the IEP meeting, Parent voiced her concerns about post high school plans for Student, which concerns were recorded in the IEP under parent/student input. *Interviews with Case Manager and Parent; Exhibit A*, p. 41.
19. In response to Parent’s concerns, the March 1, 2018 IEP documents that Case Manager sent Parent an invitation to a Transitions Night informational meeting. *Id.* District Transition Program was discussed as an option for Student, and it was agreed that Parent would be connected with Transition Coordinator. *Id.* Case Manager stated that neither Transition Coordinator nor other District Transition Program staff were included in the March 1, 2018 IEP meeting because, prior to the meeting, Parent had not expressed interest in the District Transition Program. *Id.*
20. The March 1, 2018 IEP also documents that Student was considering participation in a vocational woodworking program. *Id.* There has been no indication through the IEP documentation or investigation process that other options were presented to Parent and Student. *Interviews with Case Manager and Parent; Exhibit A*, pp. 29-57. Case Manager stated that other programs were not discussed during this meeting because it was the IEP team’s understanding that Student would attend Community College, and he was on track for that. *Interview with Case Manager*.
21. Parent attended a Career Night prior to Student’s senior year, which discussed opportunities to earn college credits while in high school, but she reported that at the

time, the programs presented were above Student's abilities. *Interviews with Parent and Counselor*.

22. Following the IEP meeting, Parent was provided contact information for Transition Coordinator, and she emailed him on April 30, 2018 for information regarding the transitions programs available to Student following graduation. *Exhibit 2*, p. 8. Transition Coordinator responded by notifying Parent that the process officially begins in the fall and attached a list of agencies and services available in the adult system, including The Resource Exchange and Department of Vocational Rehabilitation (DVR). *Exhibit 2*, pp. 8-9. Transition Coordinator also attached information regarding the District Transition Program. *Id.*

### **C. The Beginning of Student's Senior Year**

23. No action was taken by the District immediately following Parent's email exchange with Transition Coordinator. *Interviews with Parent, Case Manager, Counselor, Transition Coordinator and Transition Teacher*. In early October of 2018, Parent attended student conferences with Case Manager and expressed her concern about Student after graduation. *Exhibit J*, p. 27. Parent was worried that District Transition Program would not address Student's needs and wanted to know more about what it offered. *Id.*
24. Both Counselor and Case Manager also expressed concerns in email exchanges that District Transition Program was not appropriate for Student. *Id.* at pp. 36, 41, 49. For example, on January 31, 2019, Case Manager emailed Counselor and commented that "transitions is probably out...being able to drive is a big indicator...I am not sure why she thinks transitions is an option." *Id.* at 36. On February 6, 2019, Counselor emailed Transition Coordinator and Transitions Teacher for assistance in finding an appropriate program for Student, as she believed his scores were high enough that he would not qualify for District Transition Program. *Id.* at p. 41.
25. Staff demonstrated deficits in knowledge about the programs offered by the District. *Interviews with Case Manager and Counselor*. By way of example, Case Manager expressed that she did not know if Student was eligible for Concurrent Enrollment, and when asked about why District Transition Program was discussed as an option if it was not appropriate for Student, Case manager stated that the program is new to her. *Interview with Case Manager*. She could not explain the inconsistency between District Transition Program being discussed as an option in IEP meetings and her email to Counselor indicating that it was not an option. *Id.* Counselor stated that she was not trained on District Transition Program. *Id.*
26. Parent corresponded with Transition Coordinator and Transition Teacher, who provided additional information on post-secondary transition. *Exhibit J*, pp. 28-29. Transition Teacher also provided limited information about DVR and recommended that Student

complete an application to the program and take the Accuplacer College Placement Test. *Id.*

#### **D. The February 12, 2019 IEP Meeting**

27. On February 12, 2019, District convened a properly constituted IEP team in order to review and update Student's present levels of academic achievement and functional performance, needs and goals and to develop a plan to provide special education and related services. *Exhibit F*, pp. 3-4. Notices of Meeting were delivered to Parent and Student outlining the above-stated purpose. *Id.* The Notices did not state that a purpose of the meeting would also be the consideration of the post-secondary goals and transition services for Student. *Id.* During an interview, Case Manager indicated that she was not aware that this information regarding transition planning should be included in the Notice of Meeting. *Interview with Case Manager.*
28. Parent and Student attended the meeting. *Exhibit A*, p. 61. Although Parent and Student were investigating District Transition Program as an option for Student and had received applications for DVR, there were no representatives from these agencies in attendance at the meeting. *Interviews with Case Manager and Parent; Exhibit A*, p. 61; *Exhibit F*, pp. 3-4. Case Manager stated that District Transition Program staff were not invited to the meeting because Parent thought District Transition Program was not a good placement. *Interview with Case Manager.* Nevertheless, this IEP also documents that the District Transition Program was being considered. *Exhibit A*, p. 67.
29. The February 12, 2019 IEP describes Student's needs as assessed through AimsWeb Benchmark assessments in math and reading. *Id.* at pp. 63-64. Student performed well below average when compared to his peers in reading comprehension. *Id.* Testing revealed that Student was progressing in math and was average when compared to his peers. *Id.* Student achieved his annual goal for mathematics but fell short in reading comprehension. *Id.* His teacher reported that Student was able to advocate for himself when feeling the need to share or if he had needs outside the classroom. *Id.*
30. Based on these assessments, Student exhibited the need to improve in the areas of math computation and reading comprehension and a need for supports from a paraprofessional in the general classroom and across all settings. *Id.* at p. 65.
31. The February 12, 2019 IEP also describes Student's strengths, preferences and interests as assessed through both an interview Student completed with Case Manager and through the You Science transition assessment. *Exhibit A*, pp. 63-65. Student reported strengths including art, music and math, as well as an interest in learning different musical instruments. *Id.* The results of the You Science assessment revealed that Student is a combination of extrovert and introvert, who is naturally happiest to build and offer deep expertise on a topic. *Id.* at p. 65.

32. As with the March 1, 2018 IEP, the February 12, 2019 IEP indicates that Student had age-appropriate independent living skills and no need for community experiences. *Id.* at p. 68. However, Case Manager stated that she should have included needs in social interaction in this section of the IEP. *Interview with Case Manager.* The February 12, 2019 IEP also documents that no agency linkages were made despite consideration of District Transition Program and DVR by Student and Parent. *Id.* at p. 68. As stated above, no agency representatives were invited to this meeting. *Id.*
33. Focusing now on Student's post-secondary goals, the February 12, 2019 IEP includes an updated career employment goal that student will be employed in the music field following completion of post-secondary education, which was narrowed from the previous goal of working in music or art based on Student's feedback. *Id.* at p. 66; *Interview with Case Manager.* However, the post-school education/training goal was not updated and appears to be identical to the one listed in the March 1, 2018 IEP. *Id.* at p. 67. Case Manager stated that the educational goal should have been updated to include Student's goal of attending Community College. *Interview with Case Manager.*
34. The SCO next discusses the portion of the February 12, 2019 IEP that should contain a description of transition services. As in the March 1, 2018 IEP, the February 12, 2019 IEP does not document the transition services or activities to be provided to Student by adults in the community to promote his progress toward his post-secondary and annual goals. *Exhibit A*, p. 67. Case Manager stated that the IEP should have described that Student would receive support in life skills classes or support from Case Manager. *Interview with Case Manager.* Given the above findings, the SCO finds that Student was not receiving transition services aligned with his needs and post-secondary goals.
35. Student's planned course of study included American Literature and Algebra III to prepare Student for attending college, as well as band courses to support his interest in music and life skills to support Student with resources to research career paths. *Id.* at p. 67.
36. During the February 12, 2019 IEP meeting, Parent once again expressed concern for what Student would do after high school, and Parent's input was recorded in the IEP. *Id.* at 65; *Interview with Parent.* In response to Parent's concerns, Counselor was noted to be working with different people in the District to see if Student qualified for support. *Id.* The February 12, 2019 IEP does not document that options beyond the District Transition Program were presented to Student. *Id.* at 59-74. A Senior Exit meeting was scheduled for May of 2019. *Id.* at p. 65.
37. Following the February 12, 2019 IEP meeting, Counselor contacted Transition Coordinator and Transition Teacher for additional information regarding whether Student would be an appropriate candidate for District Transition Program. *Exhibit J*, p. 40. She also inquired as to whether Student could attend Community College through

District Transition Program. *Id.* Transition Coordinator replied that to qualify for the District Transition Program, a student must have significant documented gaps in skills related to employment, independent living and community access. *Id.*

38. Transition Coordinator and Transition Teacher sent Counselor an application for DVR and recommended that Student apply for DVR and consult with disability services at Community College. *Id.* Counselor also met with Director of Concurrent Enrollment, learned that Student was not eligible for Concurrent Enrollment and notified Parent. *Interviews with Parent, Director of Concurrent Enrollment and Counselor.*

#### **E. The April 3, 2019 Meeting**

39. On March 6, 2019, Parent emailed Case Manager requesting a meeting to create a transition plan that meets Student's needs. *Exhibit J*, p. 47. Parent expressed that she recently learned that Student should have had a transition plan in place since age 15 and that Student may be entitled to help with vocational classes to assist in getting a job. *Id.*
40. District was not responsive to Parent's concerns or request for an IEP team meeting. Case Manager did not convene an IEP team for a meeting to discuss Student's transition plan. *Interview with Case Manager; Exhibit F*, p. 5. Instead, Case Manager scheduled a Senior Exit meeting for April 3, 2019. *Exhibit F*, p. 5.
41. The purpose of a Senior Exit meeting is to determine a student's status in regard to graduation eligibility; document a student's anticipated goals for post-secondary education, employment and adult living; provide a summary of the student's performance including academic achievement, functional performance, the student's perspective and recommendations for meeting postsecondary goals; and provide student prior written notice of change of placement upon graduation or aging out of the public school system at age 21. *Exhibit I*, p. 5. Agencies that may be providing services to the student should be invited. *Id.*
42. The purpose of a Senior Exit meeting is not to discuss a student's IEP or to develop a transition plan, as Parent requested. *Interview with Case Manager; Exhibit I*, p. 5; *Exhibit J*, pp. 1-10.
43. Notices of Meeting were sent to Parent and Student and provided that the purpose of the meeting was to conduct a Senior Exit meeting and discuss the educational needs of Student. *Exhibit F*, pp. 5-6. The Notices did not state that a purpose of the meeting would also be the consideration of post-secondary goals and transition services for Student. *Id.*
44. In attendance at this meeting were Student, Parent, Parent's Advocate, Director of Special Education, Zone Special Education Coordinator, Building Administrator and Case Manager. *Exhibit J*, pp. 1-10. A general education teacher did not attend. *Interviews with Parent, Director of Special Education and Case Manager; Exhibit J*, p. 1. Representatives

from transition service agencies were not invited to and did not attend the April 3, 2019 meeting. *Interviews with Case Manager and Parent; Exhibit J*, p. 1.

45. During the meeting, Case Manager reviewed Student's Summary of Performance, which documents Student's areas of strength, such as math and written language, and areas of limitation, such as reading. *Interview with Case Manager; Exhibit J*, pp. 1-10.
46. The Summary of Performance also documents Student's accommodations and functional performance in the areas of social/interpersonal behavior or skills, independent living skills, environmental access/motor and mobility skills, self-determination and advocacy, self-direction, communication, career and vocational and work tolerance and work skills. *Exhibit J*, pp. 4-5. It states that Student does not require supports in independent living skills, environmental access/motor and mobility skills and communication. *Id.*
47. Student's IEP was not discussed or modified during this meeting. *Interviews with Case Manager and Parent*. Parent raised questions about Student's options after high school, including District Transition Program and Concurrent Enrollment. *Interviews with Case Manager, Parent Advocate and Parent*. Parent also asked about the evaluations Student should complete, and Parent and Parent's Advocate requested additional assessments to determine Student's eligibility for post-secondary services. *Id.*
48. Case Manager obtained parental consent for further assessments and tabled the meeting. *Id.* Case Manager stated it was no longer a Senior Exit meeting at this point. *Interview with Case Manager*. When asked why a Senior Exit meeting was scheduled in response to Parent's request for a meeting to discuss Student's transition plan, Case Manager stated that she thought they would "discuss all of it" at the meeting. *Id.*
49. The Prior Written Notice dated May 14, 2019 states that during the Senior Exit meeting, Parent requested further assessments of Student, and the meeting was tabled and consent received for further assessments to determine cognitive abilities for consideration of adult supports. *Exhibit A*, p. 97.

#### **F. The May 14, 2019 IEP Meeting**

50. On May 14, 2019 and May 23, 2019, District convened properly constituted IEP teams for IEP meetings. *Exhibit A*, pp. 83-84. The stated purpose of the May 14, 2019 IEP meeting was reevaluation, to discuss evaluation data to determine whether Student was eligible for special education services and review and update the IEP. *Exhibit F*, p. 7. In addition, the meeting was scheduled to consider post-secondary goals and transition services for Student. *Id.* This is reflected in the Notices of Meeting, which were sent to Parent and Student on April 26, 2019. *Id.* at pp. 7-8.
51. The Notices of Meeting also state that any identified agencies will be invited to the meeting if the purpose of the meeting is to consider transition services needs or needed

transition services. *Id.* Both Transition Coordinator and Transition Teacher attended the May 14, 2019 meeting, and Transition Teacher attended the May 23, 2019 meeting. *Exhibit A*, pp. 83-84. There were no representatives from other transition service agencies present at either meeting. *Id.*

52. Prior to the May 14, 2019 meeting, Student's needs were assessed through Woodcock Johnson and Wechsler Adult Intelligence Scale (WAIS-IV) testing. *Interview with Case Manager; Exhibit A*, 86-87. Student's performance in reading on the Woodcock Johnson revealed that he was in the limited skill set when compared to his peers. *Id.* His performance in math calculation skills and written expression was average. *Id.* Aimsweb Plus Benchmark assessments showed that Student was well below average in math and average in reading when compared to his peers. *Id.* WAIS-IV results showed scores in the average to low average range with a weakness in processing speed and a strength in working memory and nonverbal reasoning abilities. *Id.*
53. Parent, a teacher and a para Educator completed the Adaptive Behavior Assessment System 3<sup>rd</sup> Edition, and Student's adaptive scores were within the average to below average range with no significant concerns reported. *Id.* Student's weakness was in social skills and strengths were in self-care and functional academics. *Id.* Evaluation results indicate that Student was able to self-advocate and independently get all of his needs met with no concerns. *Id.* There were no significant adaptive, social or emotional concerns. *Id.*
54. The IEP team reviewed the evaluations completed by Student and discussed transition programming options. *Interviews with Case Manager and Parent.* Parent was provided with a copy of the evaluations at the meeting and did not request additional time to review them. *Interviews with Parent and Case Manager.* It was determined based on the evaluations completed that Student's scores were too high to qualify for services through The Resource Exchange, a program that provides support in accessing community resources. *Interviews with Parent and Director of Special Education; Exhibit N*, pp. 19-30.
55. The May 14, 2019 IEP describes Student's strengths, preferences and interests as assessed through both an interview Student completed with Case Manager and through the You Science assessment completed in February of 2019. *Exhibit A*, pp. 88-89. Student described strengths in art, music and math, among others. *Id.* During an interview with Case Manager in April of 2019, Student indicated that he would like to work and then attend Community College to become a sound technician. *Id.* at p. 89.
56. As with the March 1, 2018 and February 12, 2019 IEPs, the May 14, 2019 IEP indicates that Student had age-appropriate independent living skills. *Id.* at p. 90. The May 14, 2019 IEP also documents that no agency linkages were made despite Student's placement in District Transition Program and the presence of Transition Coordinator and Transition Teacher at the May meetings. *Id.* at p. 91. For community experiences, the May 14, 2019

IEP states that Student has a driver's license and can access the community appropriately for restaurants, movies, etc. *Id.* Case Manager reported there were no needs in this area. *Interview with Case Manager.*

57. Turning to the post-secondary goals, the May 14, 2019 IEP contains updated career employment and post-school education/training goals. *Id.* at pp. 90-91. The career employment goal reads that upon completion of post-secondary education, Student will be employed in the field of sound technology. *Id.* The post-school education/training goal states:

Upon graduating from high school, [Student] will be employed as a sound technician, he is enrolled in the 18-21 program beginning on August 2019 and will focus on employment and community access within the community and classroom settings. In order to gain the skills necessary to work in the field as a sound technician he will participate in non-paid work experiences at various businesses in the community to improve advocating for his needs and following multi-step directions in order to carry out tasks and participate in on-the-job training or enroll in classes for sound technician. [Student] will also focus on interview skills and employment applications in order to improve comprehensive skills. Student will focus on employment and spending/budgeting money and making purchases in the community and classroom setting. [Student] will attend post-secondary education training for sound technician. *Id.*

58. At this time, Student still expressed an educational goal of attending Community College. *Interview with Case Manager.* With regard to Student's planned course of study, the May 14, 2019 IEP describes that transition coordinators and staff will work with Student on progress towards post-secondary goals by participating in unpaid work in the community and in order to learn job skills to meet his goals. *Id.*

59. As in the March 1, 2018 and February 12, 2019 IEPs, the May 14, 2019 IEP does not document the transition services or activities to be provided to Student by adults in the community to promote his progress toward his post-secondary and annual goals. *Exhibit A*, p. 91. Case Manager could not describe what transition services Student should be or currently is receiving. *Interview with Case Manager.* She stated that she would have to ask Transition Coordinator and Transition Teacher specifically what they do, but she suspected that the services included "the life skills they are doing," the independent program working with him, reading and counting money and supporting Community College. *Id.* Case Manager said that she does not know what that would look like because she is not in the District Transition Program. *Id.*

60. Transition Coordinator and Transition Teacher were present for the meeting and reviewed the District Transition Program. *Interviews with Parent and Transition Coordinator and Teacher; Exhibit A*, p. 97. They also described services offered by DVR. *Id.* Transition Coordinator and Transition Teacher discussed DVR services that could be received in conjunction with Community College and referred Parent to DVR. *Interviews with Transition Coordinator and Transition Teacher.*
61. Parent expressed frustration that Student could not complete vocational courses through District Transition Program. *Id.* Parent also expressed concern that District Transition Program would not address Student's needs and focused on areas in which Student did not exhibit needs. *Interviews with Parent, Case Manager, Director of Special Education, Transition Coordinator and Transition Teacher.* Director of Special Education, Case Manager and Counselor shared this concern. *Interviews with Director of Special Education, Counselor, Case Manager and Parent Advocate; Exhibit J*, pp. 36, 41, 49. When asked whether Student exhibited significant, documented gaps related to employment, independent living and community access, Director of Special Education acknowledged that he did not. *Interview with Director of Special Education.* When asked the same question, Case Manager highlighted Student's deficits in social interaction and reading. *Interview with Case Manager.*
62. In response to Parent's concerns, Transition Coordinator and Transition Teacher explained how District Transition Program could be tailored to students by adjusting a student's tasks at the work site based on the student's abilities. *Interviews with Parent, Case Manager, Transition Coordinator and Transition Teacher.* Parent, Student and Parent's mother discussed the options presented to Student and decided that Student would have his diploma withheld and enroll in District Transition Program. *Interview with Parent.* Parent noted that the IEP team was pushing for Student to take his diploma and work with DVR as an alternative to District Transition Program. *Id.* The meeting was tabled, and a second meeting was scheduled on May 23, 2019 to draft Student's IEP and transition plan. *Interview with Parent and Case Manager; Exhibit A*, p. 97.

#### **G. The May 23, 2019 IEP Meeting**

63. The May 23, 2019 IEP meeting was scheduled as a continuation of the May 14, 2019 IEP meeting to determine appropriate post-secondary placement for Student. *Exhibit F*, pp. 9-10. Notices of Meeting were sent to Parent and Student. *Id.*
64. Prior to the May 23, 2019 IEP meeting, Case Manager consulted with Transition Coordinator and Transition Teacher to determine appropriate goals for Student, based on the programming and services offered by District Transition Program. *Interview with Case Manager.* This is inconsistent with the IDEA, which requires that transition services be based on the individual child's needs, taking into account the child's strengths, preferences and interests. 34 C.F.R. § 300.43(a)(2). Case Manager stated that in

preparation for the May 23, 2019 IEP meeting, she removed any school-related goals to ensure that Student's goals matched the District Transition Program. *Id.*

65. Parent was provided with a draft of the May 14, 2019 IEP at the outset of the May 23, 2019 meeting. *Complaint; Interview with Parent and Director of Special Education.* Director of Special Education and Case Manager expressed that draft IEPs are just drafts used as a starting point for conversation and subject to change. *Interview with Director of Special Education and Case Manager.* Parent did not request additional time to review the draft, and the full IEP was reviewed during the meeting. *Interviews with Parent and Case Manager.*
66. The May 14, 2019 IEP reflects that Parent expressed concerns regarding appropriate placement for Student and had questions about what Concurrent Enrollment, District Transition Program and DVR could offer. *Exhibit A, p. 89.* The parent/student input section of the IEP also indicates that Parent wanted Student to receive assistance for transition into a job and wanted to see Student advocate for himself. *Id.* Parent acknowledged that she had expressed concerns as reflected in the parent input section. *Interview with Parent.* According to Parent, these concerns appear to have been incorporated from those that she shared during the May 14, 2019 IEP meeting. *Interview with Parent.*
67. Case Manager reported that the input was provided during the May 14, 2019 meeting and that additional concerns expressed by Parent during the May 23, 2019 meeting were noted in the Prior Written Notice. *Interview with Case Manager.* The Prior Written Notice indicates that Parent sought opportunities for student to attend Community College through transitions. *Id.* at p. 96. The IEP team rejected that option because Student did not qualify for Concurrent Enrollment and District does not pay for post-secondary school. *Id.*
68. The IEP team reviewed what District Transition Program would look like for Student. *Interviews with Parent and Case Manager.* To allow time for Student to enroll in courses at Community College, the IEP team proposed that Student would participate in the District Transition Program Tuesday through Thursday, and Parent was in agreement. *Interviews with Case Manager and Parent; Exhibit A, p. 97.*
69. Student is currently enrolled in District Transition Program and taking one online college course. *Interviews with Parent, Transition Coordinator and Transition Teacher.* As part of the District Transition Program, three days per week, students access work sites through various work opportunities in the community, gaining work skills and networking. *Interviews with Transition Coordinator and Transition Teacher.* The program is designed to close gaps in the areas of employment, community access and independent living. *Id.* The program focuses on foundational skills, and students access those skills while practicing at a work site. *Id.*

70. The foundational skills developed through District Transition Program include punctuality, hygiene, appropriate dress, following multi-step directions, being able to know an appropriate staff person to discuss issues with, working through work-based frustrations, peer and manager relationships, filling out job applications and interview skills, among others. *Id.*
71. Each student has the opportunity to go to two different work sites per day and work under the supervision of a staff member. *Id.* For example, students work in the dining room and cafeteria of a retirement home, setting up for meals by performing tasks such as vacuuming and setting tables. *Id.* District Transition Program currently partners with Target, Summit Retirement Home, Petco, Old Chicago, Walmart, Safeway, Life Network and a food pantry. *Id.* The program does not partner with any employers in the field of music or sound technology, an interest of Student. *Id.*
72. The program also provides classroom time of about 45 minutes to one hour each day when the students focus on different topics such as current events, resume writing, interview skills and budgeting skills. *Id.* Student is participating in programming consistent with this description. *Id.* District Transition Program does not provide supports for Student's college coursework. *Id.*
73. Transition Coordinator admitted that it can be difficult to tailor the District Transition Program to the individual student, particularly with regard to selection of the work sites. *Id.* Although the students may perform at different functional levels, they are pursuing similar goals. *Id.*
74. Transition Teacher acknowledged that Student has fewer academic, adaptive, safety and independent living needs than his peers in the program in many ways. *Id.* For example, he is the only student in the program who can drive. *Id.* In fact, he drives himself to the program on a regular basis and is punctual. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegations No. 1, 2 and 3: District significantly impeded Parent's opportunity to participate in the IEP process by failing to meaningfully respond to Parent's concerns regarding Student's post-secondary plans, constituting a substantive violation of the IDEA and denial of a FAPE.**

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

In addition, to ensure parents are able to participate in the transition service planning process, school districts must make substantial efforts to invite the child's parents to the IEP meeting. 34 C.F.R. § 300.322(d). To that end, the notice of meeting must indicate that a purpose of the meeting will be the consideration of the post-secondary goals and transition services; indicate that the responsible administrative unit or state operated program will invite the student; and identify any other agency that will be invited to send a representative. 34 C.F.R. § 300.322(b)(2); ECEA Rule 4.03(7)(b)(i)(A)-(C).

Meaningful parent participation 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 District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a school district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than a "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, while the District staff gave Parent an opportunity to share concerns and recorded those concerns in the IEP, the District failed to respond to Parent's concerns in a meaningful way.

First, for over one year, Parent expressed concerns about Student's post-secondary plans. (FF #18, 23, 36, 39, 47). The District's response was to provide Parent with contact information and applications for service providers, including District Transition Program, which the team believed was inappropriate for Student. (FF #19-22, 61). No further action was taken between March 1, 2018 and Student's next IEP meeting in February of 2019. (FF #23). Rather than respond to Parent's concerns by discussing and exploring appropriate transition services through the IEP process, Parent was left to investigate Student's options on her own.

Second, when Case Manager scheduled the February 12, 2019 IEP meeting, she failed to indicate in the Notice of Meeting that a purpose of the meeting would be the consideration of Student's post-secondary goals and transition services, consistent with 34 C.F.R. § 300.322(b)(2); ECEA Rule 4.03(7)(b)(i)(A)-(C). (FF #27). Although Case Manager was aware that Parent was investigating District Transition Program and had concerns about it, she failed to invite representatives from the program to the February 12, 2019 IEP meeting. (FF #28).

Third, when Parent requested an urgent meeting to discuss Student's transition plan on March 6, 2019, the District failed to convene an IEP team and instead scheduled a Senior Exit meeting. (FF #39, 40). Once again, no representatives from transition service agencies were invited to the meeting. (FF #44). A general education teacher did not attend the meeting, and there was no requirement for one to do so—as alleged by Parent under 34 C.F.R. § 300.321(a)(2)—because

the SCO finds that the April 3, 2019 meeting was not an IEP meeting. No changes were made to Student's IEP or transition plan, and when Parent asked questions about evaluations and transition services, the meeting was tabled to schedule both evaluations and an IEP meeting. (FF #47-49). However, the District's decision to schedule a Senior Exit meeting to discuss Student's graduation and Summary of Performance instead of convening an IEP team to review Student's transition plan is further evidence that the District did not meaningfully respond to Parent's concerns about Student's transition plan and services.

Fourth, it was not until May of 2019, when Student was just weeks from graduation, that District convened an IEP team to discuss Student's transition plan and services. (FF #6, 50). During the May 14, 2019 and May 23, 2019 IEP meetings, Parent and Student were presented with options of withholding a diploma to participate in District Transition Program or graduating and enrolling in college with the option of support from DVR. (FF #60-62). Transition Coordinator and Transition Teacher were invited to the May of 2019 IEP meetings, but no representatives from DVR were invited to the meeting, despite the program being offered to Student. (FF #51).

Parent contends that the District denied her meaningful participation during the May of 2019 IEP meetings by providing her with a draft IEP at the start of the May 23, 2019 IEP meeting. *Complaint*. However, it is "permissible under the IDEA for school district staff to bring a draft of some or all of the IEP content to the IEP meeting, provided that the parents are informed that it is a draft subject to review and discussion by the parents and the IEP team." *Lodi Sch. Dist.*, 46 IDELR 85 (SEA WI 2005). Parent was afforded an opportunity to inspect and review the draft IEP, and her feedback was incorporated into the IEP. (FF #65-67). The IEP team made it clear that the draft was provided for review and discussion. *Id.* The full IEP was reviewed and developed through the course of the meeting, and Parent did not request additional time to review it. *Id.* While it is permissible to bring a draft IEP to the IEP team meeting, there is nothing in the IDEA that requires the preparation of a draft in advance. 71 Fed. Reg. 46,678 (2006).

Nevertheless, the evidence described above demonstrates that the District denied Parent meaningful participation by failing to meaningfully respond to Parent's concerns regarding Student's post-secondary plans. In reaching the conclusion that the District's actions impeded Parent's right to participate in the development of Student's transition services, the SCO also relies on Conclusion 4 below that demonstrates the District's failure to follow relevant procedural requirements when developing transition services ultimately resulted in a program that did not meet Student's individualized needs.

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996). The above-described violations demonstrate that District significantly impeded Parent's opportunity to participate in the decision-making process, in

violation of 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996). Accordingly, the SCO concludes that Student was denied a FAPE.

**Conclusion to Allegation No. 4: District's failure to provide transition services for Student based on Student's individual needs, taking into account Student's strengths, preferences, and interests, constitutes a substantive violation of the IDEA and denial of a FAPE.**

**a. Analysis of Student's Transition Services**

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. \_\_\_\_ (2017), 137 S. Ct. 988, 999. An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law.

As relevant to the Complaint allegations here, transition services means:

A coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

34 C.F.R. § 300.43(a)(1).

In Colorado, transition planning and services are required components of an IEP, beginning with the first IEP developed when the child is age 15, but no later than the end of 9th grade, or earlier if deemed appropriate by the IEP team. ECEA Rule 4.03(6)(d)(i). Transition services must include appropriate, measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. 34 C.F.R. § 300.320(b)(1). In addition, the IDEA requires that the IEP must outline the transition services (including courses of study) needed to assist the child in reaching his post-secondary goals. 34 C.F.R. § 300.320(b)(2).

Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and include instruction; related services; community experiences; the development of employment and other post-school adult living objectives;

and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. 34 C.F.R. § 300.43(a)(2).

As “the centerpiece of the statute’s education delivery system for disabled children . . . [an] IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). School districts are thus 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.

The importance Congress attached to the IDEA procedural requirements, beginning with development of an IEP according to IDEA’s procedures, cannot be refuted. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205 (1982). “[T]he procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to ‘meet the unique needs’ of a child with a disability.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. \_\_\_\_ (2017), 137 S. Ct. 988, 1000.

The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. *Pasadena Unified School District*, 119 LRP 25486 (SEA CA 6/17/19), (citing *Virginia S., et al. v. Dept. of Ed.*, State of Hawaii (D. Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 WL 80814, \*10)). However, “the mere absence of a stand-alone transition plan does not constitute procedural error.” *Id.* (citing *Lessard v. Wilton-Lyndeborough Coop. School Dist.* (1st Cir. 2008) 518 F.3d. 18, 25). In *Pasadena Unified School District*, the failure of the district to conduct an appropriate transition assessment was a harmless procedural violation of the IDEA where the transition plan itself was appropriate. *Id.* The student’s transition plan included required content and appropriate, measurable goals. *Id.* The plan referred to the student’s desire to be an actress and listed a variety of activities to support the transition goals, including transition services in the form of 60 minutes per year of individual vocational assessment, counseling, guidance and career assessment services. *Id.*

In this case, the evidence demonstrates clear procedural violations that, taken together, failed to provide a coordinated set of activities. First, the post-secondary education/training goals are missing from Student’s March 1, 2018 IEP and February 12, 2019 IEP, and instead, it appears that the employment goals were copied into the education/training section. (FF #12, 33). Post-secondary goals relating to training and education may sometimes overlap, according to OSERS. “For example, for a student whose postsecondary goal is teacher certification, any program providing teacher certification would include education as well as training.” However, post-secondary goals relating to employment must be separate from those relating to training and education. This is because employment is distinct from training and education. *Questions and Answers on Secondary Transition*, 57 IDELR 231 (OSERS 2011); *see also Questions and Answers*

on IEPs, Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 09/01/11). Second, while based on assessments, the post-secondary goals were not consistently updated in accordance with 34 C.F.R. § 300.320(b)(1). (FF #33). Third, there are no transition services listed in any of the IEPs in effect during the period under investigation, in violation of 34 C.F.R. § 300.320(b)(2). (FF #15, 34, 59).

Technical deviations from the requirements of the law, such as the failure to include a statement of transition services here, do not necessarily “render an IEP entirely invalid; to hold otherwise would ‘exalt form over substance.’” *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996), (citing *Doe v. Defendant I*, 898 F.2d 1186, 1190 (6th Cir.1990); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir.1990); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir.1990)). However, the failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996) (finding that while the student's IEP did not contain an explicit statement of transition services, there was evidence that appropriate services had been provided nonetheless, and the IEP contained language that addressed the student's needs for community awareness and daily living skills).

“A transition plan that fails to comply with the procedural requirements, such as one comprised of generic and vague post-high school goals and services that are equally applicable to almost any high school student, and is not based on the specific student's needs or fails to take into account the student's strengths, preferences, and interests, does not comply with the procedural requirements of the IDEA.” *Los Angeles Unified Sch. Dist.*, 113 LRP 39561 (SEA CA 08/16/13) (citing *Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D. Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814). See also *Jefferson Cty. Bd. of Educ. v. Lolita S.*, 581 F. App'x 760, 765 (11th Cir. 2014, unpublished) (finding that a student was denied FAPE where vague language was used to describe the student's post-secondary goal and did not match the student's diploma track); *Antioch Unified School District*, 119 LRP 32337 (SEA CA 7/17/19) (finding that a student was denied FAPE where student's transition goal was not measurable and was not related to the student's post-secondary goals).

Here, District's failure to comply with the procedural requirements of the IDEA impeded Student's right to a FAPE. Like in *Antioch Unified School District*, Student's IEPs listed activities that Student would perform but failed to include the services he would receive. (FF #12, 15-16, 34, 59). It is not clear whether Student was consistently receiving transition services, and if so, what those transition services were. (FF #15-16, 34 and 59).

Student consistently expressed interest in attending college and described career and employment goals that narrowed from music or art down to working in the field of sound technology. (FF #9, 12, 31, 33, 55). Student was consistently found to have age-appropriate independent living skills, and evaluations completed for his May of 2019 IEP revealed that

Student was able to self-advocate and independently get all of his needs met with no significant adaptive, social or emotional concerns. (FF #10, 32, 53, 56). Nevertheless, the IEP team ultimately placed student in a transition program designed for students with significant, documented needs in the areas of independent living skills, employment skills and community access. (FF #5, 69, 70). District staff acknowledged that Student did not exhibit significant needs in these areas and shared Parent's concern about placement. (FF #61).

Student's annual goals were written in consultation with Transition Coordinator and Transition Teacher to ensure that they fit into the services offered by District Transition Program instead of the goals and services being tailored to fit Student's needs. (FF #64). Student is not doing training or employment in the field of sound technology or any related field, and District Transition Program does not partner with sites that do work in sound technology or music. (FF #69-72). His programming focuses on foundational employment skills, many of which Student is able to sufficiently perform. (FF #69-70, 74).

While Student has exhibited needs in social interaction, the most recent assessments showed no significant social or emotional concerns. (FF #8, 10, 32, 53). Student is the only participant in the program who is able to drive, and he has no difficulty with punctuality. (FF #74). District Transition Program does not provide academic supports for Student's college coursework. (FF #72). Similar to the student in *Jefferson Cty. Bd. of Educ.*, Student's post-secondary track is inconsistent with his placement. Student was on a path to attend college when he was placed in a program for students who need basic employment skills. Based on the evidence, the SCO finds and concludes that Student's IEP is not reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

Indeed, the constellation of procedural violations demonstrated here resulted in a randomness that belies the "coordinated set of activities" contemplated by IDEA to facilitate a student's movement from school to post-school activities. As in *Jefferson Cty. Bd. of Educ.* and *Antioch Unified School District*, a lack of individualized transition planning and programming for Student has resulted in a denial of FAPE. 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).

### **b. 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 transition services that he should have received pursuant to the IDEA's guarantee of a FAPE.

In this case, the evidence shows that Student was not receiving transition services from September 16, 2018 through September 16, 2019, or if Student was receiving services, District staff have not been able to articulate the nature of the services. (FF #15-16, 34 and 59). Because no transition services were outlined in Student's IEPs, and it is not clear whether Student would have qualified for other programming, the SCO has no measurable comparison in terms of fashioning a compensatory award. Recognizing that this violation has been ongoing since September 16, 2018, while avoiding being overly burdensome on Student, the SCO crafted this remedy to be completed prior to the end of the 2019-2020 academic year for the following reasons.

By December 20, 2019, the IEP team will reconvene to develop a transition plan based on age-appropriate transition assessments, with post-secondary goals and transition services tailored to Student's needs, strengths, interests and preferences. The provision of compensatory transition services is tied to the transition plan that will be developed through this meeting and the results of assessments that will be administered to Student. Compensatory services will take effect at the beginning of the next academic semester, January 7, 2020. The compensatory services will take the form of academic support and transition advisement based on the findings of the IEP team and the Student's identified needs, and these services must be provided for a minimum amount of 18 hours, in addition to the transition services outlined in the Amended IEP. This total accounts for the 18 weeks in the academic calendar beginning on January 7, 2020 and ending on May 27, 2020. Accordingly, the SCO concludes that Student is entitled to 18 hours of compensatory education services to remedy this denial of FAPE.

### **c. Systemic Violations**

Addressing the failure to provide appropriate transition services to Student does not end the inquiry, however. Pursuant to its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible, transition-age youth 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." 71 Fed. Reg. 46,601.

In this case, the findings demonstrate that the failure to develop appropriate transition services is not unique to Student; rather, the failure is systemic in nature. In reaching this determination, the SCO relies on the following facts. First, transition services were omitted from at least three of Student's IEPs. (FF #15, 34, 59). Next, Case Manager stated that she was

never instructed to include transition services in IEPs and that her colleagues developed IEPs in a similar fashion. (FF #15). The SCO accordingly finds and concludes that the evidence supports a systemic violation with respect to post-secondary transition planning, and thus sets forth remedies below consistent with the IDEA. 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”).

### REMEDIES

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

- a) Failing to include in Student’s IEPs, from September 16, 2018 to September 16, 2019, appropriate, measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills consistent with 34 C.F.R. § 300.320(b)(1).
- b) Failing to include in Student’s IEPs, from September 16, 2018 to September 16, 2019, transition services needed to assist Student in reaching post-secondary goals, consistent with 34 C.F.R. § 300.320(b)(2).
- c) Failing to notify Parent that a purpose of the February 12, 2019 meeting was to consider post-secondary goals and transition services in accordance with 34 C.F.R. § 300.322(b)(2).
- d) Failing to consider Parent’s concerns in the development, review and revision of Student’s IEP, consistent with 34 C.F.R. § 300.324(a)(1)(ii).

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

- 1. By **December 6, 2019** the District must submit to CDE a proposed corrective action plan (“CAP”) that effectively addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to reoccur 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. Comprehensive District-wide training on transition services developed and conducted with the assistance and participation of CDE secondary transition program staff, consistent with the requirements of 34 C.F.R. §§ 300.43(a)-(b), 300.320(b) and ECEA Rules 2.51 and 4.03(6)(d).
  - i. At a minimum, the training must cover the required components of an appropriate transition plan, including a sufficiently detailed description of

transition services; the use of comprehensive and age-appropriate transition assessments to determine student strengths, interests, needs and preferences; and required alignment between postsecondary needs, goals, and transition services. Additionally, the training must address both parent participation—specifically considering a parent’s concerns under 34 C.F.R. § 300.324(a)(1)(ii)—and Notice of Meeting requirements, consistent with 34 C.F.R. § 300.322(b)(2).

- ii. By **January 10, 2020**, the District must contact Gail Lott, CDE Senior Consultant/Secondary Transition, to plan the development of the required training.
  - iii. This District-wide training must be delivered to all District special education staff responsible for developing and implementing transition services no later than **May 27, 2020**.
- b. Training materials for the above-described training must be submitted to CDE for review and approval **at least 30 days prior to the delivery of training**.
  - c. Evidence that such training has 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 **June 10, 2020**. This training may be conducted in-person, or through an alternative technology-based format, such as a video conference, web conference, webinar or webcast.
  - d. Case Manager and Director of Special Education must read and review *Indicator 13 (Transition Requirements) Compliance & Quality Tips* and *CDE IEP Procedural Guidance: Exceptional Student Services Unit Technical Assistance (Revised 07/2017)*—with a specific focus on post-secondary transition services planning—by **December 6, 2019**. Evidence that this review has occurred must be documented, and a written summary of the documents must be submitted by both Case Manager and Director of Special Education to CDE no later than **December 6, 2019** for approval.
  - e. To address the “appropriate future provision of services for all children with disabilities” consistent with CDE’s obligation under 34 C.F.R. § 300.151(b), the District must review IEPs for any transition-age student assigned to Case Manager, as well as complete a review of a random sampling of 20 IEPs from IDEA-eligible students receiving transition services for the 2019-2020 academic year. The random sampling must be representative of students from each high school across the District. In conducting this review, the District must complete the following activities:

- i. Provide the names of all transition-age students assigned to Case Manager.
  - ii. Verify that each IEP contains appropriate, measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills;
  - iii. Verify that each IEP describes the transition services needed to assist the child in reaching post-secondary goals and verify that transition services are being provided, or that they will be provided, in accordance with these IEPs.
  - iv. Verify that each IEP clearly states the various transition services to be provided so that District's level of commitment to students receiving transition services and planning will be clear to parents and providers.
  - v. Any necessary amendments/changes to the IEPs referenced in section (e) (i)-(iv) above must be made consistent with all applicable provisions of 34 C.F.R. § 300.324 by **May 27, 2020**.
  - vi. 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, **March 31, 2020**.
2. By **December 20, 2019**, to address the failure to develop appropriate transition services for Student, the District must complete the following activities. Gail Lott, CDE Senior Consultant/Secondary Transition, is available at the request of the District to provide guidance and support for the following required activities.
  - a. Conduct a comprehensive, age-appropriate transition assessment;
  - b. Convene the IEP team to develop an appropriate transition plan for Student tailored to his needs, strengths, interests and preferences with post-secondary and annual goals aligned with the results of assessments.
    - i. The transition plan must include a list of transition services Student will receive to enable and promote Student's progress toward meeting annual and post-secondary goals.

- ii. Evidence that this IEP meeting occurred must be documented by providing a copy of the Notice of Meeting, IEP and PWN to CDE no later than 10 days following the IEP meeting. Although the IEP team is not required to provide or grant each parental request in developing transition services, the required documentation must evidence that Parent had a meaningful opportunity to participate in the IEP process. CDE will determine, in its sole discretion, whether the evidence is sufficient.
- iii. If Parent does not respond to District's efforts to convene an IEP meeting by **December 10, 2019**, CDE will determine compliance with this remedy in accordance with 34 C.F.R. § 300.322. If Parent revokes consent for services, District shall be excused from further compliance with this specific remedy No. 2, though this would not excuse District's compliance with respect to remedy No. 1.

**3. Compensatory Education Services for Denial of FAPE**

- a. District shall provide Student with a minimum of **18 hours of academic support and transition services** by **May 27, 2020**.
  - i. Academic support must be tailored to Student's college coursework and needs as identified by the IEP team following development of an appropriate transition plan for Student, including but not limited to tutoring services as determined by the IEP team.
  - ii. Academic support must be provided by a teacher—appropriately licensed and certified to provide instruction in the applicable content area—as designated by the IEP team. Transition services must be tailored to Student's needs, strengths, interests and preferences as identified through age-appropriate transition assessments, and must be provided by District Transition Program staff as designated by the IEP team.
- b. By **December 20, 2019**, District shall schedule compensatory services in collaboration with Student and Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. If Parent refuses to meet with District within this time period, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents its efforts. A

determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with CDE.

**These compensatory services shall begin by January 7, 2020** 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.

- c. 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. 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, the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the Department of the change in the monthly service log.

The Department will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

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

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

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

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 15th day of November, 2019.

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Lindsey Watson  
State Complaints Officer

## Appendix

### **Complaint, pages 1-15**

- Exhibit 1: May 14, 2019 IEP
- Exhibit 2: Email correspondence between Parent and District
- Exhibit 3: May 14, 2019 Evaluation Report
- Exhibit 4: Email correspondence regarding Concurrent Enrollment
- Exhibit 5: Duplicate May 14, 2019 IEP

### **Response, pages 1-12**

- Exhibit A: IEPs in effect for the 2018-19 and 2019-20 school years
- Exhibit B: Service logs or other documentation of services/supports/accommodations provided from September 16, 2018 to present
- Exhibit C: All evaluation and assessment results/reports from September 16, 2018 to present
- Exhibit D: Eligibility determinations issued from September 16, 2018 to present
- Exhibit E: Prior written notices issued from September 16, 2018 to present
- Exhibit F: Notices of Meeting issued from September 16, 2018 to present
- Exhibit G: Requests for parental consent from September 16, 2018 to present
- Exhibit H: Grade reports and IEP progress reports for the 2018-19 and 2019-20 school years
- Exhibit I: District and/or School policies and procedures
- Exhibit J: Email correspondence between District staff and Parents
- Exhibit K: Names and contact information for District and School staff members with knowledge of the facts underlying the Complaint allegations
- Exhibit L: Verification of delivery of District's Response to Parent
- Exhibit M: IEP and Summary of Performance documentation cited in District Response
- Exhibit N: Information regarding college preparatory, vocational and transitions programming offered by District

### **Reply, pages 1-5**

#### **Telephonic Interviews with:**

- Counselor: October 17, 2019 and October 28, 2019
- Director of Special Education: October 21, 2019
- Director of Concurrent Enrollment: October 23, 2019
- Parent: October 28, 2019
- Case Manager: October 29, 2019
- Transition Coordinator and Transition Teacher: October 31, 2019
- Parent's Advocate: November 5, 2019