

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

**State-Level Complaint 2023:565
Denver Public Schools**

DECISION

INTRODUCTION

On August 10, 2023, AdvocacyDenver (“Complainant”) filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The Complaint was filed on behalf of students identified as children with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ (“Students”) at School. The State Complaints Officer (“SCO”) initially determined that the Complaint identified two allegations, including one systemic allegation. On September 1, 2023, the SCO amended the allegations, expanding the scope of the second allegation to align with the requirements of 34 C.F.R. § 300.153(b)(4). Ultimately, the SCO determined that the Complaint identified two systemic allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

The two systemic allegations involve separate but overlapping classes of Students. In addition, in order to deliver a thorough Response, District first had to conduct an investigation to identify which Students belonged to the second class, requiring a significant extension of time to Respond. Due to this extension, as well as the number of identified Students, the voluminous documentation, and number of interviews required to resolve the Complaint’s systemic allegations, the SCO extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from August 10, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

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

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to implement the IEPs of Students in the affective needs (“AN”) program from August 10, 2022 to present, specifically by:
 - a. Failing to provide Students with the special education services required by their IEPs, in violation of 34 C.F.R. § 300.323; and
 - b. Failing to ensure that the personnel necessary to carry out the IEPs were appropriately and adequately prepared and trained, in violation of 34 C.F.R. §§ 300.156 and 300.207.
2. Failed to develop, review and revise IEPs, from August 10, 2022 to present, that were tailored to meet the individualized needs of Students who were placed in a seclusion/de-escalation room because the behavioral strategies and supports did not adequately address those Students’ behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. School is a middle school in District. *Response.* School is an innovation school, which is a status that can be granted by District’s Board of Education. *Interview with District’s Senior Manager of Special Education for charters and innovation schools (“Senior Manager”).* Schools with a specific focus or philosophy can petition for innovation status. *Id.* If granted innovation status, they are not required to follow District’s traditional curriculum. *Id.*
2. Ten Students who attended School from August 2022 through May 2023 and were identified as children with a disability under the IDEA participated in the AN program for at least a portion of that period. *Exhibit A.* According to District, four of those Students were secluded in one of two “calm down” or de-escalation rooms in School at least once during the 2022-2023 school year. *Id.*
3. Because the only Students involved in both allegations in this Complaint were those Students who participated in the AN program at School, for the purposes of this Decision, “Students” will refer specifically to IDEA-eligible students at School who participated in the AN program at some point during the 2022-2023 school year.

² The appendix, attached and incorporated by reference, details the entire Record.

B. District Support and Supervision

4. Senior Manager and her central office team support charter and innovation schools in understanding and implementing the IDEA. *Id.* The nature of that support varies by school, but School operates similarly to traditional schools in District. *Id.*
5. One Special Education Instructional Specialist (“SEIS”) supports School with general practice and procedure while another provides support specific to center-based programs. *Id.*
6. During the 2022-2023 school year, an SEIS met with the special education staff at School monthly to provide support and answer questions. *Id.* She was also available to answer questions as needed. *Id.* This year, both SEIS’s meet with the team twice a month in addition to being available on an as needed basis. *Id.*
7. In October of 2022, when she took on this role, Senior Manager also met with building administrators to discuss best practices and strategies for hiring an AN teacher. *Id.*
8. An experienced special education teacher was assigned to coach and support the special education teachers. *Interviews with instructional coach (“Coach”) and special education math teacher (“Math Teacher”).* Coach was assigned to School one day a week. *Id.*
9. She provided support with drafting IEP documents and using District’s IEP data management system. *Interview with Coach; Exhibit J, p. 3.* Coach also provided special education teachers with feedback after formal and informal observations. *Interview with Coach.*

C. AN Center Staffing

10. Complainant’s concern was that School lacked an AN teacher, so paraprofessionals, who were not adequately prepared or trained, had been responsible for supervising and providing direct services to the Students in School’s AN program. *Complaint, p. 3.*
11. School was unable to hire an AN center teacher before the start of the 2022-2023 school year. *Response, p. 2.* Instead, responsibility for the Students in the AN program was divided among six mild/moderate special education teachers at School. *Id.*
12. Special Education Teacher 1 provided case management, AN programming and math instruction to the sixth graders in the AN program. *Response, p. 3; Interview with Special Education Teacher 1.* Special Education Teacher 1 was hired as a mild/moderate special education teacher at School, but she also had prior experience teaching at a residential facility. *Interview with Special Education Teacher 1.*

13. Special Education Teacher 2 provided case management, AN programming and math instruction to the seventh graders in the AN program. *Response*, p. 3; *Interview with Social Worker 1*.
14. Special Education Teacher 3 provided case management, AN programming and math instruction to the eighth graders in the AN program. *Response*, p. 3; *Interview with Special Education Teacher 3*.
15. Three other mild/moderate teachers provided ELA instruction to the Students in the AN program. *Response*, p. 3. However, around November 2022, Special Education Teacher 3 began teaching the intensive ELA class for eighth graders while the other teacher took over his responsibilities for providing push-in support inside the general education classroom. *Interviews with Math Teacher and Special Education Teacher 3*.
16. AN classes at School were co-taught by a special education teacher and a social worker. *Interviews with Special Education Teachers 1 and 3 and Social Workers 1 and 2*. Initially the assigned special education teacher and social worker worked together to design curriculum for their own classes. *Id.*
17. About halfway through the year, Special Education Teacher 1 was made a team lead for the AN program. *Interview with Special Education Teacher 1 and Social Worker 2*. In that role, she collaborated with the other special education teachers to develop consistent lesson plans for all of the AN classes. *Id.* School also purchased a formal curriculum to support learning in those classes. *Interview with Special Education Teachers 1 and 3*.
18. With this coverage plan, Students were never left in a classroom with just paraprofessionals for instruction. *Interview with Special Education Teacher 3 and an AN center paraprofessional at School ("Paraprofessional")*.
19. The service providers in the AN program were aware of the needs of Students, had access to their IEPs through District's data-management program and were aware of the services the Students required. *Interviews with Special Education Teachers 1 and 3, Math Teacher and Social Workers 1 and 2*.

D. Staff Training at School

20. During the 2022-2023 school year, each of the six special education teachers providing services to the 10 Students had an active teaching license with an endorsement as a special education generalist. *CDE Exhibit 1, pp. 1-6*.
21. Five of those six teachers had also received current nonviolent crisis intervention training from the Crisis Prevention Institute ("CPI"), as had at least 18 other staff members at School.

Exhibit K. This training included information on de-escalation in addition to the use of restraints. *Interview with Special Education Teacher 1*.

22. Although not listed in Exhibit K, Special Education Teacher 3 credibly reported completing CPI training at the start of the 2022-2023 school year. *Exhibit K; Interview with Special Education Teacher 3*. He submitted all the paperwork, but never received a certificate of completion. *Id.*
23. Similarly, both Social Workers 1 and 2 also indicated that they had received current CPI training. *Interviews with Social Worker 1 and 2*. Both social workers had active licenses as school social workers. *CDE Exhibit 1*, pp. 7, 8.
24. Special education staff at School also received ongoing professional development and training on a variety of topics provided by District staff. *Response*, pp. 3-4.
25. Finally, Special Education Teachers 1, 2 and 3, who taught the AN classes, participated in a series of trainings specific to working with students in AN programs, presented by CDE staff. *Id.* at p. 3. This included trainings on drafting prior written notice, evaluations and eligibility, LRE determinations and developing IEPs. *Exhibit J*, p. 4. Social Workers 1 and 2 also participated in these trainings. *Id.*

E. School's Special Education Classes

26. School operates on a block schedule with 85-minute periods. *Interview with Math Teacher*. Odd period classes meet on red days and even period classes meet on white days. *Id.*
27. Each grade had its own AN class, which met for 85 minutes every other day. *Exhibit N; Interviews with Special Education Teachers 1 and 3*. With class every other day, the AN classes met two or three times per week. *Interview with Math Teacher*. At 85 minutes every other day, the SCO finds that the AN classes met approximately 10 times a month or 850 minutes per month ("MPM"). With the block schedules some weeks would have been 170 minutes per week ("MPW") while others would have been 255 MPW.
28. Math and English language arts ("ELA") classes at School meet for two periods so that they meet at the same time every day. *Interviews with Math Teacher and Special Education Teacher 3; Exhibit N*.
29. School's intensive or "co-taught" math and ELA classes consist exclusively of Students with IEPs and are co-taught by a special education and a general education teacher. *Id.* At 85 minutes per day, the SCO finds that the co-taught classes met for 425 MPW.
30. Special education teachers at School also push into general education math and ELA classes to provide support inside the general education setting. *Interviews with Math Teacher and Special Education Teacher 3; Exhibit N*.

31. Case managers are responsible for drafting IEPs at school. *Interviews with Special Education Teachers 1 and 3 and Senior Manager*. Neither School nor District makes a practice of reviewing IEPs once they are finalized to ensure compliance with IDEA or consistency with School programming. *Id.*

F. Implementation of Special Education Services – Affective Needs

32. Nine of the ten Students participated in one AN class the entire time they were enrolled at School. *Interviews with Special Education Teachers 1 and 3 and Social Worker 1*. As such, the SCO finds they were receiving either 170 or 255 MPW—or approximately 850 MPM—of instruction from a special education teacher to address social emotional needs.

33. Consistent with his IEP, the tenth Student was not enrolled in an AN class, but, during the first semester, came to the class for 30 MPW to get his minutes with a social worker in a group setting. *Interviews with Special Education Teacher 1 and Social Worker 1; Exhibit B*, p. 498. During the second semester he received these services at another time because continuing to participate would have required missing beneficial instruction in another class. *Interviews with Special Education Teacher 1 and Social Worker 1*.

34. After amendments or annual reviews were completed within two months of their enrollment at School, per their IEPs, the sixth graders in the AN class were supposed to receive 765 or 800 MPM of special education services to address social emotional needs. *Exhibit B*, pp. 156, 252, 265. The SCO finds that 765 MPM is the equivalent of the AN class meeting nine times a month instead of 10, as would have happened about half the months. *Exhibit I*.

35. The seventh graders were to receive 160 and 180 MPW respectively. *Id.* at pp. 326, 367. The SCO finds that even if these weekly minutes are converted to monthly minutes (640 MPM Or 720 MPM) these Students were receiving substantially more time in the AN class than their IEPs indicated.

36. Prior to their annual reviews, the eighth graders' IEPs listed approximately 75 minutes per day ("MPD") for AN services, but after, no minutes for social emotional services with a special education teacher were included. *See, e.g., Id.* at pp. 214, 229, 352, 416. Special Education Teacher 3 and Social Worker 2 worked together to draft IEPs, with the former drafting academic sections and supports while the latter drafted social emotional sections. *Interviews with Special Education Teacher 3 and Social Worker 2*. Both thought the other was adding in the AN services and neither recalled any IEP team discussions about removing those services. *Id.* All four Students remained in the eighth grade AN class after their IEPs were revised. *Id.* Thus, the SCO finds that the omission of the AN class from these IEPs was a clerical error.

37. In the Spring of 2022, two Students, Student D and Student E, were transferred from a separate school setting to a District AN program. *Exhibit B*, pp. 255, 357. Neither Student's IEP nor least restrictive environment ("LRE") was updated until several months later, in

October 2022. *Id.* However, during their 2021 IEP team meetings, both teams considered transitioning the Students to a less restrictive setting. *Id.* at pp. 384, 405.

38. Although Student D initially had attendance problems after transferring, the IEP team at School conducted a reevaluation and determined that special education 40-79% of the time, and not a separate school, was his LRE. *Id.* at pp. 255, 265-266. Student D also made progress on several IEP goals during the 2022-2023 school year. *Exhibit C*, pp. 70-73, 120-124.
39. After transferring to School, Student E was primarily enrolled in general education classes, which his IEP team determined was his LRE at his next IEP team meeting. *Exhibit E*, pp. 357, 367. As a result of ongoing attendance challenges Student E did not make progress on his IEP goals. *Exhibit C*, pp. 45-48.
40. Similarly, Student A's placement was changed to a separate school in March 2023, but he continued to attend School until November 2023, when a separate school placement was identified. *Id.* at p. 159; *Interviews with Special Education Teacher 1 and Social Worker 1*.
41. Based on a comprehensive review of the Record, the SCO finds that, for at least part of the year, eight of the ten Students were receiving either more or fewer minutes in the AN class than their IEPs described.

G. Implementation of Special Education Services – Literacy and Math

42. Once updated for his new LRE, Student E's IEP required 150 MPW of both math and ELA instruction inside of general education, as well as 30 MPW of each outside of general education. *Exhibit B*, p. 367. All year, he was enrolled in general education math and ELA classes where he received push-in support from Special Education Teacher 2 and another mild/moderate special education teacher. *Exhibit N*. Special education teachers also pulled small groups of students to receive support outside of the general education classroom as required. *Interview with Math Teacher*. The SCO finds that enrollment in general education classes was inconsistent with his IEP which required a separate school until October 2022. However, the SCO finds that District was implementing the math and ELA services in his IEP after it was updated in October 2022.
43. The remaining nine Students in the AN program received math or ELA special education services outside the general education setting in grade-level co-taught classes. *Exhibit N*.
44. Only one Student's IEP did not include services for math and ELA. *Exhibit B*, p. 156. Consistent with his IEP, he was not enrolled in a special education ELA class. *Interview with Math Teacher*. However, even after his transfer IEP was updated by School, it still required 250 MPW of math instruction outside of the general education classroom. *Exhibit B*, p. 156.

45. Two eighth graders' IEPs were initially updated during annual reviews to replace 75 MPD of math and ELA instruction with 100 MPW. *Exhibit B*, pp. 297, 312, 352, 417. Both were later updated again to reflect 425 MPW. *Id.* at pp. 124, 479. Neither IEP team ever discussed reducing their services and both Students remained enrolled in the co-taught special education class throughout the year. *Interviews with Special Education Teacher 3 and Social Worker 2*. Thus, the SCO finds that this reduction of minutes in their IEPs was a clerical error and did not reflect an intent to reduce their services.
46. The other eighth graders had IEPs that called for 75 MPD and 425 MPW of math and ELA instruction. *Exhibit B*, pp. 214, 229, 448, 463.
47. A seventh grader's IEP, written by another school, initially required 350 MPW of instruction from a special education teacher for emotional and academic support, as well as 60 MPD of direct special education services for ELA. *Id.* at p. 434. He was enrolled in both a co-taught math class and a co-taught ELA class. *Exhibit N; Interview with Math Teacher*. After it was updated in October 2022, his IEP included 60 MPD of instruction from a special education teacher in math and the same for ELA. *Exhibit B*, p. 339. The IEP team specifically considered moving him to a general education ELA class and decided that would not be appropriate for him. *Id.* at p. 341.
48. Almost every sixth-grader's IEP, including amendments, listed minutes for math and ELA that were either less than 425 MPW or more than 85 MPD. *See, e.g. Id.* at pp. 156, 248, 403, 498. In particular, after annual meetings held during the 2022-2023 school year, two of the four IEPs listed 300 MPW of math and ELA instruction. *Id.* at pp. 141, 265. Only one sixth grader's IEP included 425 MPW of math and ELA instruction, but that was only after his IEP described a separate school placement. *Id.* at p. 177-178.
49. Because School's co-taught classes include instruction from a general education teacher in grade-level curriculum for a portion of each lesson, Special Education Teacher 1 thought those minutes did not count as special education instruction when drafting IEPs. *Interview with Special Education Teacher 1*. She has since learned that special education instruction is determined by the environment, or composition of other students, in addition to the person providing the instruction. *Id.*
50. Based on a comprehensive review of the Record, the SCO finds that for at least part of the year and sometimes for the entire year, all ten Students were receiving at least math and, in most cases, math and ELA services that were inconsistent with the special education services described in their IEPs.

H. District Policy and Procedure

51. District policy JKA bans the use of seclusion by all District employees. *Exhibit L*, p. 72. Seclusion is defined by District policy as the placement of a student "in a room or a space from which

gress is involuntarily prevented.” *Id.* at p. 75. The use of “monitored seclusion” in which the student is monitored by one or more staff members who accompany them into the room, is not banned. *Id.*

52. If schools will be using monitored seclusion, ideally two, but at least one, staff member must always be with the student. *Id.* at p. 78. The space must have adequate ventilation, lighting and size and, to the extent possible, should be free of injurious items. *Id.* The monitored seclusion should end as soon as it is not necessary for the physical and emotional regulation of the student. *Id.*
53. If there is a “reasonable probability” that monitored seclusion might be used with a particular student, the student’s parents must be notified in writing, which can occur at an IEP meeting. *Id.* Finally, within one school day of the use of monitored seclusion, appropriate District staff must notify the parents. *Id.*
54. District procedure requires that a functional behavioral assessment (“FBA”) be considered whenever a student exhibits a pattern of behavior which impedes the student’s learning or the learning of their peers. *Id.* at p. 3. New FBAs should be conducted anytime a student exhibits new behaviors or when the intensity, frequency or duration of a behavior changes significantly. *Id.* at p. 4.
55. A behavior intervention plan (“BIP”) should then be created to target the function of the behavior as identified in the FBA. *Id.* Once created, the BIP should be updated as needed and not less than once a year. *Id.* at p. 3.
56. District provides schools with guidelines around the use of calm down areas and monitored seclusion, but special education staff from the central office do not proactively monitor the use of these spaces. *Interview with Senior Manager.*

I. School’s Calm Down Rooms

57. Complainant’s concern is that District relied on the use of seclusion at School instead of developing IEPs with positive behavior interventions to address behavior. *Interview with Complainant.*
58. During the 2022-2023 school year, staff at School used two different spaces as “calm down” rooms. *Interview with Math Teacher; Exhibit G, p. 74.*
59. Initially a room near the front of the School was used (“Calm Down Room 1”). *Interviews with Math Teacher and Social Worker 1.* This room was an office for School’s security officer, who was only present one day a week. *Id.* It had a desk and a bookshelf, and staff added a punching bag students could use to help them calm down. *Id.* Once students started using it, they realized the office supplies made it unsafe. *Interview with Social Worker 1.*

60. School staff next set up a room off a special education classroom to use as a calm down space (“Calm Down Room 2”). *Interviews with Math Teacher and Social Worker 1*. This room was first used in October or November 2022. *Exhibit G*, p. 74. This room was initially an office for a school psychologist. *Interview with Math Teacher*. They tried putting bean bags and a mini trampoline in the office to help students regulate. *Interview with Social Worker 1*. However, these items were quickly destroyed and had to be removed. *Id.*
61. Several Students voluntarily used both rooms to take a break, sleep, or get energy out. *Interviews with Social Workers 1 and 2 and Special Education Teacher 1*.
62. District acknowledges that four Students at School were subject to seclusion³ during the 2022-2023 school year, in violation of District policy. *Response*, p. 4.
63. An external lock was added to the door of Calm Down Room 2 around December 2022. *Exhibit G*, p. 75. The lock on the door was removed after two to four weeks, but locks were left on the windows throughout the school year. *Id.* In other instances, Students were prevented from exiting by a staff member holding the door shut from the outside. *Interview with Paraprofessional; Exhibit G*, pp. 19, 83.
64. Students B and F each reported being placed alone in a room and being unable to exit one time. *Exhibit G*, pp. 14, 26, 78, 79. No staff recall concerns about either Students’ behavior or seeing either Student alone in a calm down room on any other occasion. *Exhibit G*, pp. 10-121; *Interviews with Special Education Teachers 1 and 3, Social Workers 1 and 2 and Paraprofessional*. Thus, the SCO finds that neither Student was secluded more than once.

J. Student G’s Use of Calm Down Rooms

65. Student G’s mother reported that she had to pick him up from Calm Down Room 2 on multiple occasions. *Exhibit G*, pp. 35-40. She does not know if he was alone in the room but believes he must have been prevented from exiting or he would have left School. *Id.* at p. 39.
66. Student G had a “short fuse” and escalated easily and often. *Interviews with Special Education Teacher 3, Social Worker 2 and Paraprofessional*. When escalated, he was verbally aggressive and would run out of the classroom. *Interviews with Social Worker 2 and Paraprofessional*.
67. When escalated, he would usually go with Social Worker 2 or a preferred administrator to their offices. *Interviews with Special Education Teacher 3, Social Worker 2 and Paraprofessional*. He rarely used the calm down rooms at that time. *Id.* He was never left alone while he was escalated. *Interviews with Paraprofessional and Social Worker 2*.

³ The CDE is only authorized to investigate allegations regarding violations of the Protection of Persons from Restraint Act (“PPRA”) that are filed by a student, parent, or legal guardian. C.R.S. § 22-32-147; PPRA Rules 2.07(1). As such, this investigation did not independently determine whether seclusion occurred or consider whether District’s use of the calm down rooms was consistent with the requirements of the PPRA. As a result of its own investigation, District has already implemented several changes, including administrative changes and staff-wide training on restraint and seclusion. *Interview with Senior Manager*.

68. After an escalation, he gets tired. *Exhibit G*, p. 37. He would often end up sleeping. *Interview with Paraprofessional*. If he was sleeping, she would sometimes close the door and sit just outside so as not to disturb him. *Id.* He was always free to leave when he woke up. *Id.*
69. Student G's IEPs all required one-on-one adult support throughout the day, especially in general education classes. *Exhibit B*, pp. 122, 124, 350, 352, 416. This support was provided by Paraprofessional, who was with him throughout the day to support him with academics and emotional regulation. *Interview with Social Worker 2 and Paraprofessional*.
70. Student G's BIP from November 2021 was updated in October 2022 and January 2023 when his IEP was updated. *Exhibit B*, pp. 1-5, 47-52, 78-82, 114, 342. However, neither the problem behaviors, the function of the behaviors, the strategies and outcomes, nor the crisis intervention plan was substantially modified at any time. *Id.*

K. Student A's Use of Calm Down Rooms

71. The calm down rooms were most frequently used by Student A. *Interviews with Math Teacher, Special Education Teacher 1, Social Worker 1 and Paraprofessional; Exhibit G*, pp. 10-121. He frequently went to a calm down room voluntarily to nap or work with his paraprofessional. *Interviews with Special Education Teacher 1 and Social Worker 1*.
72. At other times, Student A was taken to Calm Down Room 1 or 2 involuntarily. *Id.* Sometimes staff stayed with him. *Id.* At times, he was alone in the room and staff would prevent him from exiting, by holding the door for instance. *Interviews with Math Teacher and Paraprofessional; Exhibit G*, pp. 82-89.
73. School is challenging for Student A, and he becomes very frustrated and escalates quickly. *Interview with Social Worker 1*. When escalated, he engages in verbal and physical aggression, property destruction and unsafe behavior like climbing on furniture or leaving the building. *Interviews with Special Education Teacher 1 and Social Worker 1*.
74. He always had an assigned paraprofessional with him during the day, to help with academics and emotional regulation. *Id.*
75. Student A's behavior needs increased throughout the year, with "an increase in physical aggression, property destruction, elopement, task refusal, disruptive language, and escalation duration." *Interview with Special Education Teacher 1; Exhibit B*, p. 49.

L. Other Efforts to Address Student A's Behavior

76. Providers tried various interventions to help Student A. *Interviews with Special Education Teacher 1 and Social Worker 1*. Initial interventions included skill instruction, daily check ins

with a social worker, close proximity of an adult, sensory supports, a visual timer and redirection. *Exhibit D*, p. 47.

77. A daily behavior report card was implemented from September 15, 2022 through December 1, 2022. *Id.* A reward system allowing Student A to earn choice time at the end of each week was trialed for about five weeks from September 1, 2022 through October 5, 2022. *Id.*
78. In October 2022 he was given responsibility for providing water for the school service dog every other day and School began implementing teacher-directed breaks. *Id.* Both interventions continued through a reevaluation in March 2023. *Id.*
79. At the end of October staff replaced earning choice time at the end of the week with an opportunity to earn choice time at the end of every class. *Id.* This opportunity continued until December 1, 2022. *Id.* School also created visual behavior expectations and a visual schedule, which were implemented through March 2023. *Id.* at p. 48.
80. As of October 24, 2022 School had dedicated a “calm down” space for Student A. *Id.* When in that room, School still needed to put him in a hold when he would engage in property destruction that created an unsafe environment. *Id.*
81. In December, Student A started earning a break after every 15-20 minutes of work. *Id.* The chance to earn choice time at the end of every period was changed to an opportunity to earn choice time at the end of every day, which continued through the end of January 2023. *Id.*
82. In January 2023, Student A had a visual timer to earn breaks after 20 minutes of instruction. *Id.* He also got cue cards he could use to show staff how he was feeling. *Id.*
83. Despite these interventions, staff did not observe sufficient improvement in Student A’s behavior. *Id.* at p. 47. Student A continued to have frequent behaviors that lasted anywhere from 20 to 85 minutes, with multiple incidents occurring on some days. *Exhibit H*, p. 119. More than nine percent of the time, classrooms had to be cleared due to Student A’s behavior. *Exhibit D*, p. 46.

M. Student A’s Placement Change

84. On January 12, 2023, District received consent for a reevaluation. *Id.* at p. 45. Student A’s IEP team met March 9, 2023 to review and update his IEP. *Exhibit B*, p. 252. Ultimately, the IEP team determined that Student required more special education services and a separate school setting to receive a FAPE. *Id.* at pp. 178-179.
85. Unfortunately, multiple separate schools informed District they would not take Student A because of physical aggression and property destruction. *Interview with Special Education Teacher 1*. In the meantime, he remained at School where he continued to receive special

education instruction in math and ELA for 425 MPW as well as instruction in an AN class for about 850 MPM. *Id.*

86. After April 17, 2023, Student A was placed on a shortened-day schedule. *Exhibit C*, p. 118. He continued to attend his special education classes and gym but dropped his general education science and social studies classes. *Interview with Special Education Teacher 1*. The IEP was also amended at that time to clarify that at a separate school, he would require 1,800 MPW of instruction from a special education teacher. *Exhibit B*, pp. 180, 197.

87. District continued to have difficulty finding a placement for Student A, so he returned to School on a shortened schedule this fall. *Interviews with Senior Manager and Special Education Teacher 1*. District initially found him a spot in September 2023, but, due to challenges connecting with Student A's parents, he was not enrolled. *Interview with Senior Manager*. Student A started at a separate school on November 1, 2023. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District systemically failed to implement the special education services in Students' IEPs during the 2022-2023 school year, in violation of 34 C.F.R. § 300.323. This violation only resulted in a denial of FAPE for one Student. The personnel working with the Students possessed the required certifications and were adequately prepared and trained and there was no violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

Complainant's concern is that Students did not receive the special education services required by their IEPs because School's AN program lacked a dedicated teacher. (FF # 10.)

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

An IEP must identify the special education and related services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4). The IEP must include an explanation of the extent to which the student will be removed from a classroom setting with nondisabled peers. 34 C.F.R. § 300.320(a)(5). A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* at § 300.323(c)(2).

The IDEA does not excuse a district's failure to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage).

To satisfy its implementation obligation, a school district must ensure that each teacher and related services provider is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 C.F.R. § 300.323(d).

A. IEP Accessibility

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). There is no indication here that the providers at School were unaware of their responsibilities under the Students' IEPs. The special education teachers providing AN and math services to sixth and eighth graders had access to their Students' IEPs and were aware of their needs and the services they should have been receiving. (FF #18.) The social workers were similarly aware of their responsibilities. (*Id.*) Thus, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. § 300.323(d).

B. Implementation of Special Education Services

Here, nine of the ten Students in the AN program received 85 minutes of social emotional instruction from a special education teacher every other day, or approximately 850 MPM. (FF #s 27 and 32.) During at least some of that period, three students should have been receiving services at a separate school. (FF #s 37 and 40.) After their annual review meetings, because of a clerical error, all social emotional instruction from a special education teacher was removed from the eighth graders' IEPs. (FF # 36.) Overall, the SCO found that for at least part of the year, the IEPs of eight of the ten Students required either more or less social emotional instruction than they were receiving with 85 minutes of class every other day. (FF #s 34-41.)

In this case, nine of the ten Students were enrolled in a special education math class and eight were enrolled in a special education ELA class. (FF #s 43-44.) These classes met for 85 MPD or 425 MPW. (FF #s 28-29.) The final Student was enrolled in general education classes with push in support, which was consistent with his IEP only after it was updated in October. (FF # 42.) Overall, for at least part of the year, the IEPs of all ten Students required special education services for math and ELA that were different than what School was providing. (FF #s 42-50.)

For these reasons, the SCO finds and concludes that District systemically failed to implement the special education services required in the IEPs of the Students at School.

C. Materiality of Failure to Implement

i. Students' Special Education Services

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, 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. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 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. App'x 202, 205 (2d Cir. 2010).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

Here, the discrepancies between the services in Students' IEPs and the services they received varied from five minutes a day to placement in general education classes when a Student's IEP required a separate school setting. (FF #s 32-50.) However, in most cases the issue appears to be with the development of the IEP instead of with the delivery of services.

For example, Special Education Teacher 1 was confused about how to calculate the minutes in School's co-taught classes because of the instruction from a general education teacher. (FF # 49.) Thus, the SCO finds that the intent of the IEP teams was always for the sixth graders to be enrolled in the co-taught classes for 425 MPW of math or math and ELA, even if their IEPs required otherwise. Thus, the SCO finds and concludes that this discrepancy is not material and the Students' enrollment in the co-taught classes did not result in a denial of FAPE.

By necessity, all the sixth graders' IEPs were written by a different school. However, each IEP was amended or updated via an annual review within two months of the Student's enrollment at School. (FF # 34.) In each case, the IEP was updated to include 765 or 800 MPM of social emotional instruction from a special education teacher. *Id.* Although the AN classes met for 850 MPM, in about half the months, because of holidays, the AN class would have met only nine times, for 765 MPM. (FF #s 27, 34.) This is true even of Student D, whose IEP initially described a

separate school placement. (FF #s 34, 37.) Although School could not have implemented a separate school placement, Student D's IEP team had already been considering a change to a less restrictive placement. (FF # 37.) In addition, District conducted a reevaluation and determined that the services Student D was receiving at School were his LRE by October 2022. (FF #s 37-38.) Student D also made progress on several IEP goals during the 2022-2023 school year. (FF # 38.) Because the sixth graders were all getting the IEP services their IEP teams ultimately determined they needed, the SCO finds and concludes that the failure to implement their services before the IEPs were updated was not material.

The seventh graders' IEPs described the AN services as MPW even though School's block scheduling meant that weekly minutes varied. (FF #s 27, 35.) It is not clear why these IEPs were not written with monthly minutes instead. However, considering the difficulties many teachers had calculating minutes when drafting IEPs, this represented a clerical error and not an intent by the IEP teams to have Students miss every fifth class. (FF #s 36, 45, 49.) Similarly, the SCO finds that the inclusion of 60 MPD in a seventh grader's IEP when he was enrolled in co-taught classes that met for 85 MPD most likely indicates a problem with how the IEP was written rather than suggesting that the IEP team wished to remove him from lessons 25 minutes early each day. (FF # 47.) Likely, as with Special Education Teacher 1, Special Education Teacher 2 misunderstood how to calculate the time when a general education teacher was lecturing. (FF # 49.) Although these seventh graders were receiving more instruction from a special education teacher than their IEPs described, the SCO finds and concludes that this did not result in a denial of FAPE because the Students were receiving the services they needed.

Like Student D, Student E's IEP initially described a separate school placement but was updated in October to reflect the services he was receiving at School. (FF #s 37-39.) His prior IEP team had also been considering a move to a less restrictive setting and his new IEP team ultimately determined that enrollment in general education math and ELA classes with push in supports was his LRE. (FF #s 37, 39, 42.) Thus, the SCO finds and concludes that his enrollment at School prior to the change in his LRE did not result in a material failure to implement because the services he was receiving were the services necessary to provide him with a FAPE.

Similarly, the removal of the AN class and the decrease in the math and ELA minutes in the eighth graders' IEPs represented clerical errors, not an intent to reduce their services. (FF #s 36, 45.) Thus, the SCO finds and concludes that the failure to implement their IEPs as written, when they were receiving the services the IEP teams intended, was not a material failure to implement.

For all of these reasons, the SCO finds and concludes that the failure to implement the IEPs of nine of the ten Students was not material because it resulted from issues with how the IEPs were written rather than a failure to provide the special education services these Students needed.

ii. Student A's Special Education Services

Student A's IEP was updated in March 2023 to include more special education services and require placement at a separate school. (FF #s 40, 84.) Despite this change, Student A continued to receive the same services at School through October 2023. (FF # 85-87.) The only change was that Student A moved to a shortened day in April 2022 and stopped attending some general education classes. (FF #s 86.) While enrolled at School, Student A was receiving 425 MPW each of math and ELA instruction as well as 85 MPD of social emotional instruction every other day. (FF # 85.) This is equivalent to 1020 MPW or 1105 MPW depending on how many days the AN class met. Thus, while Student A remained at School, District was failing to provide him with 700-800 MPW of instruction from a special education teacher. This is more than a third of the minutes he should have been receiving. The SCO finds and concludes that this resulted in a material failure to implement Student A's IEP, resulting in a denial of FAPE.

iii. Compensatory Education

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

In this case, District mitigated its failure to implement Student A's separate school placement by continuing to provide special education services at School. (FF #s 85-87.) The SCO is concerned about the impact of the failure to implement Student A's separate school placement. However, in this case, the SCO, in consultation with CDE Content Specialist, finds that any award of compensatory services on top of the intensive services provided by a separate school setting could overwhelm Student A and impact his ability to benefit from any of the services. For that reason, the SCO finds and concludes that an award of compensatory services is not appropriate for Student A.

D. Note on IEP Development

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). An IEP must "include information about the services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

Here, most of the IEPs developed during the 2022-2023 school year did not describe all of the special education instruction Students were receiving. For instance, the eighth grade IEPs did not reflect social emotional instruction they were receiving from a special education teacher. (FF # 36.) Other IEPs indicated that Students were receiving 60 MPD or 300 MPW of math and/or ELA instruction outside general education when they were receiving 85 MPD or 425 MPW. (FF #s 47-49.) Because of these errors, the SCO is concerned that many IEPs did not include a clear statement of the services District was committed to providing to Students. See 71 Fed. Reg. 46667. Failing to include all the services District was providing to Students would prevent parents from making an informed decision about whether to agree with services.

E. Adequate Staff Training

Complainant's concern is that paraprofessionals, who were not adequately prepared or trained, supervised and provided direct special education services to the Students in the AN program at School. (FF # 10.)

Under the IDEA, the CDE must establish qualifications to ensure that special education teachers are "appropriately and adequately prepared and trained . . . to serve children with disabilities." 34 C.F.R. § 300.156(a). This includes ensuring that all special education teachers have obtained state certification as special education teachers. *Id.* at § 300.156(c). Administrative units must ensure that staff are "appropriately and adequately prepared, subject to the requirements of § 300.156." *Id.* § 300.207.

To that end, the CDE requires "[a]ll special education teachers [to] hold Colorado teacher's certificates or licenses with appropriate endorsements in special education." ECEA Rule 3.04(1)(a)(i). Administrative units bear responsibility for ensuring their staff comply with state licensing requirements. ECEA Rule 3.03.

Special Education Generalist is Colorado's cross categorical K-12 special education endorsement. To qualify for this endorsement, teachers must complete an approved university licensing preparation program for special education generalists (or 24 semester hours), as well as earn passing scores on elementary education, special education generalist and teaching reading content exams. See *CDE Endorsement Requirements*, found at: <http://www.cde.state.co.us/cdeprof/endorsementrequirements#spedteacher>.

Here, School did not have a dedicated AN teacher for the entire 2022-2023 school year. (FF # 11.) However, responsibility for case managing and providing services to the Students in the AN program was divided among six mild/moderate special education teachers at School. (FF #s 11-15.) All six of these teachers had active teaching licenses with a special education generalist endorsement. (FF # 20.) Both social workers had active school social work licenses during the 2022-2023 school year. (FF # 23.) The Students were not left in a classroom with just paraprofessionals for direct instruction. (FF # 18.)

The teachers and social workers supporting the Students also received CPI training in nonviolent crisis intervention and ongoing professional development and training. (FF #s 21-24.) Special Education Teachers 1, 2 and 3, as well as Social Workers 1 and 2 also participated in CDE sponsored trainings specific to working with students in AN programs. (FF # 25.) The special education teachers also got formal coaching and support from Coach. (FF #s 8-9.)

Thus, the SCO finds and concludes that AN program staff was appropriately and adequately prepared and there was no violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

Conclusion to Allegation No. 2: District developed and, as appropriate, reviewed and revised, IEPs that were tailored to meet the individual needs of Students A, B, F and G, consistent with the requirements of 34 C.F.R. §§ 300.324(a)(2)(i), (b). No violation of the IDEA occurred.

Complainant’s concern is that District relied on the use of seclusion instead of developing IEPs with appropriate behavioral strategies and supports. (FF # 57.)

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). For a student whose behavior impedes their learning, the IEP must, among other things, also “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.324(a)(2). As contemplated by 34 C.F.R. § 300.324(a)(2), this includes where the consequences of a child’s behavior, including “violations of a school’s code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures,” impede the child’s learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22).

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services. 34 C.F.R. § 300.324(b). To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. *Id.* However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994. The obligation to revise a student’s IEP to address changing behavior needs exists whether or not the district is considering disciplinary action to address the behavior. *See e.g., Morgan v. Chris L.*, 25 IDELR 227 (6th Cir. 1997, unpublished), cert. denied, 112 LRP 24142, 520 U.S. 1271 (1997) (holding that the district was obligated to convene an IEP team meeting to address behaviors even if school officials were not considering any disciplinary actions that would trigger the procedural safeguards in the IDEA).

The U.S. Department of Education has explained that the use of restraints and seclusion signal the need for a new behavioral plan:

When restraint or seclusion is repeatedly used with a child . . . a review of the student’s BIP should occur, the prescribed behavioral strategies should be modified, if needed, and staff training and skills should be re-evaluated. The need for the review is based on the individual needs of the child and the determination should include input from the family; a review could be necessitated by a single application of restraint or seclusion.

Department of Education, *Restraint and Seclusion: Resource Document*, pp. iii, 17 (May 15, 2012). (Available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.)

However, even when a district implements an IEP and BIP with fidelity, emergency occasions may arise which necessitate the use of restraint or seclusion. *See, Facility School*, 123 LRP 31699 (SEA CO 5/22/23)

Here, District policy JKA always bans the use of seclusion, instead requiring that at least one staff member always accompany the student. (FF #s 51, 52.) District procedures require that an FBA be conducted any time a student’s behavior changes or significantly increases in frequency or duration. (FF # 54.) Nevertheless, District acknowledges that four Students were subject to seclusion at school. (FF # 62.)

A. Students B and F

Students B and F were each secluded no more than one time. (FF # 64.) There is no indication that either Students’ behavior was out of control or that staff was regularly relying on seclusion to manage their behavior. *Id.* As such, the SCO finds no evidence that their IEPs lacked appropriate supports and strategies to address their behavior and needed to be reviewed or revised to address changing needs. Thus, with respect to Students B and F, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. §§ 300.324(a)(2)(i), (b) and there was no violation of the IDEA.

B. Student G

Student G’s mother reported that she repeatedly picked Student G up after escalations and described finding him in Calm Down Room 2 on multiple occasions. (FF # 65.) She presumes that he was prevented from leaving the room since he did not leave school, but she does not know if he was alone in the room. *Id.* Student G had one-on-one adult support from Paraprofessional throughout his day to support him with academics and emotional regulation. (FF # 69.) Even with that support, he escalated easily and would be verbally aggressive or leave the classroom. (FF # 66.) When escalated, he usually went with preferred staff to their offices. (FF # 67.) After, he often ended up sleeping. (FF # 68.) He did occasionally use the calm down rooms when escalated, but he was never left alone while escalated. (FF # 67.)

Although Student G often needed space to calm down, the SCO finds no evidence he was repeatedly secluded at School. Although the BIP was not modified, his IEP was also updated twice during the 2022-2023 school year. (FF # 70.) Thus, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. §§ 300.324(a)(2)(i), (b) and there was no violation of the IDEA.

C. Student A

Student A used the calm down rooms frequently and sometimes involuntarily. (FF #s 71, 72.) At times, he was placed in a calm down room alone and prevented from exiting. (FF # 72.) His behaviors, including physical aggression, property destruction and elopement increased throughout the year. (FF # 75.)

Despite these challenges, Student A's IEP was not reviewed or revised until March 9, 2023. (FF # 84.) However, School implemented various interventions in the preceding months. (FF # 76-82.) Each intervention was trialed for at least five weeks, with some continuing longer and others being adjusted as needed. *Id.* Despite these interventions, Student A continued to have frequent behaviors that interrupted his learning and required clearing other students out of their classrooms almost ten percent of the time. (FF # 83.)

After a semester of trying various interventions, in January 2023 District received consent for a reevaluation. (FF # 84.) Based in part on that reevaluation, on March 9, 2023, Student A's IEP team determined that he required a separate school setting to receive a FAPE. *Id.* District's failure to implement those new services has already been addressed in Allegation No. 1.

Because District trialed various interventions other than reliance on seclusion and then evaluated Student A and updated his IEP, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. §§ 300.324(a)(2)(i), (b) and there was no violation of the IDEA.

REMEDIES

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

- a. Systemically failing to implement Students' IEPs by failing to provide them with the required special education services, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Friday December 15, 2023**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The

CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Students and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. District's director of special education and all senior managers and SEISes must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.323 and 300.324(a). This review must occur no later than **Tuesday, January 16, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, January 22, 2024**.

3. Audit of Students' IEPs

- a. By **Wednesday, January 31, 2024**, District must submit a written practice or procedure for reviewing IEPs to ensure compliance with 34 C.F.R. §§ 300.320(a)(4), 300.323. If errors are identified, the procedure must also include a process for remedying the identified concerns and identifying and remedying errors that have impacted other students at that school.
- b. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- a. Following the approval of the required procedure, District will conduct an audit of the current IEPs for all ten Students. The review must be completed by an individual(s) familiar with the program options available at the Students' current schools.
- b. By **Tuesday, April 30, 2024**, District must provide CDE with the results of the audit of all 10 IEPs as well as copies of the original IEPs and the IEP amendments or updated IEPs remedying any concerns identified in the audit.
- c. Upon review, if CDE has concerns with the implementation of the audits or corrections, District may be required to take additional steps, including but not limited to, providing further training or guidance to staff on IEP development and implementation or allowing CDE Special Education Monitoring and Technical Assistance Consultant to provide direct support District's central office staff or special education teachers in identifying and correcting IEP concerns.

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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

CONCLUSION

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

Dated this 17th day of November, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Exhibit 1: District Policy
- Exhibit 2: Pictures
- Exhibit 3: Pictures
- Exhibit 4: News Article
- Exhibit 5: News Article

Response, pages 1-6

- Exhibit A: List of Students
- Exhibit B: IEPs and BIPs
- Exhibit C: Progress Reports
- Exhibit D: Evaluations
- Exhibit E: None
- Exhibit F: Behavior Reports
- Exhibit G: Seclusion Records
- Exhibit H: Correspondence
- Exhibit I: School Calendar
- Exhibit J: Staff Training
- Exhibit K: CPI Training
- Exhibit L: District Policies and Procedures
- Exhibit M: Staff Contacts
- Exhibit N: Special Education Schedule

Reply, pages 1-6

- Exhibit 6: News Article

Telephone Interviews

- Math Teacher: October 17, 2023
- Complainant: October 20, 2023
- Special Education Teacher 1: October 24, 2023
- Senior Manager: October 24, 2023
- Special Education Teacher 3: October 24, 2023
- Social Worker 1: October 25, 2023
- Social Worker 2: October 25, 2023
- Coach: October 25, 2023
- Paraprofessional: October 26, 2023

CDE Exhibits

- CDE Exhibit 1: Staff Certification