

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

State-Level Complaint 2024:572
Mesa County Valley School District 51

DECISION

INTRODUCTION

On June 27, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Mesa County Valley School District 51 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 27, 2023. Information prior to June 27, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

1. Failed to review and, as appropriate, revise Student’s Individualized Education Program (“IEP”) from September 2023 to April 2024 to address the progress Student made on an annual math goal, as required by 34 C.F.R. § 300.324(b).
2. Failed to implement Student’s IEP from December 2023 to April 2024, as required by 34 C.F.R. § 300.323, specifically by:

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.

- a. Not making Student's IEP accessible to the teachers and service providers responsible for its implementation; and
- b. Not providing Student with the specialized instruction in math as required by the IEP.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the CDE makes the following findings of fact ("FF"):

A. Background

1. Student is seventeen years old and, during the 2023-2024 school year, was in the 12th grade at a District school ("School"). *Exhibit A*, p. 1. She qualifies for special education under the disability categories of multiple disabilities (Down Syndrome, Autism, ADHD) including intellectual disability, speech or language impairment, and other health impairments. *Id.* at pp. 1, 100.
2. Student is fun-loving and a motivated learner who likes reading, writing, chorus, and music. *Interview with Parent*. She is well known around campus because of her desire to be out in the common areas and participate in school events where she can cheer on her classmates. *Interview with Special Education Teacher*.
3. This investigation involves reviewing and revising Student's IEP dated May 15, 2023 ("IEP") and implementation of specialized instruction in math. *Complaint*, pp. 3-5; *Exhibit M*, p. 1.

B. The IEP

4. Student's IEP Team timely convened an annual IEP review meeting on May 15, 2023. *See Exhibit C*, p. 3. The IEP was in effect during the 2023-2024 school year. *Exhibit A*, p. 97.
5. The IEP reviewed student's present levels of educational performance, noting that due to cognitive, motor, and language delays, Student has difficulty progressing at the same rate as typical peers within the general education curriculum. *Id.* at p. 100. Furthermore, Student's needs and impact of disability state that she requires individualized adult assistance to help interpret new material and link it with her existing knowledge base in a meaningful way. *Id.* at p. 109.
6. The State and District Assessment data on the IEP noted that Student took the Colorado Alternative Assessment, but that testing data was not available yet. *Id.* at p. 105. Student's Curriculum Based Measurement noted that Student was able to identify attributes of perpendicular lines, parallel lines, line segments, angles, and circles, by matching, indicating

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

on her device or by talking with 50% accuracy 3/5 trials with less than 5 adult prompts to complete task. *Id.*

7. The IEP contained a post-secondary transition plan. *Id.* at pp. 111-112.
8. Student's post-secondary education and training goal states that Student will receive on the job training in the Food Service Industry. *Id.* at p. 110. Her planned course of study noted that Student would take classes like Math, English, Science and Social Studies, to support her post-school goal of working in the Food Industry. *Id.* at p. 111.
9. Student had five annual goals in the areas of vocational/career skills, math (coded as independent living skills), writing (coded as independent living skills), social/emotional wellness, and speech language. *Id.* at pp. 112-116. Quarterly progress reports on annual IEP goals are to be provided to Parent concurrent with the issuance of report cards. *Id.*
10. The IEP included various accommodations including, in part, an assistive technology device. *Id.* at pp. 116-117.
11. Student received grade level modified curriculum to access and participate in general education classes at School. *Id.*
12. The IEP required the following special education services for the 2023-2024 school year:
 - Reading (coded as Vocational Training): 60 minutes per week of indirect reading (coded as vocational training) instruction provided by a special education teacher inside the general education classroom.
 - Math (coded as Independent Living): 215 minutes per week of direct math (coded as independent living) instruction provided by a special education teacher outside the general education classroom.
 - Writing (coded as Independent Living): 40 minutes per week of indirect vocational training instruction provided by a special education teacher inside the general education classroom.
 - Social/Emotional: 60 minutes per month of indirect vocational training instruction provided by a special education teacher inside the general education classroom.
 - Speech/Language Services:
 - 60 minutes per month of direct vocational training instruction provided by a special education teacher inside the general education classroom.
 - 60 minutes per month of direct vocational training instruction provided by a special education teacher outside the general education classroom.

- 120 minutes per month of indirect vocational training instruction provided by a special education teacher outside the general education classroom.

Id. at pp. 120-121.

13. The IEP's Service Delivery Statement states that Student "receives individualized adult support in general education with consult support for modifying content and goal work from her special education teacher, for line-of-sight safety monitoring, eating, and for monitoring her Social/Emotional Wellness." *Id.* at p. 120.
14. Student was to spend 89.5% of her day in the general education environment. *Id.* at p. 122.

C. District's Policies, Procedures, and Practices

15. At the beginning of each school year, special education teachers convene at School one day before the general education teachers and staff to participate in special education and compliance training. *Interview with Special Education Teacher and Director of Special Education.*
16. Training opportunities and/or supervision and support classroom visits also occur on a quarterly or monthly basis depending on the type of disability and level of support that a particular student needs. *Id.* There are also school professional service days where teachers receive further training when students are out of school. *Id.*
17. The training that teachers and related service providers receive is flexible and based off changes in the law or observations throughout District, with a targeted emphasis on any patterns occurring in the classrooms. *Id.*
18. District uses CDE's guidance and guidelines to guide the provision of special education services to IDEA-eligible students. *Id.* Moreover, District has a procedural guidance handbook on a drive that is available to all staff. *Id.* Special Education Teachers sometimes use a special education newsletter that is published once a month and discusses best practices for analyzing present levels and what accommodations may be appropriate for a particular student. *Interview with Special Education Teacher.*
19. In terms of IEP implementation, all teachers and service providers are provided with IEP snapshots for students with disabilities through a program called Enrich. *Interviews with Interim Special Education Director and Special Education Teacher.* District requires that any teacher who would work with a student with disabilities have access to those snapshots. *Id.*
20. Generally, general education teachers are the first group who receive access to the snapshots so that they are knowledgeable and prepared to provide whatever accommodations are necessary for any IDEA-eligible students in their classroom. *Interview with Interim Special Education Director.* Furthermore, some special education teachers have general education

teachers sign a form or the copy of an IEP itself to reflect that the general education teacher had a chance to review a student's IEP. *Id.*

21. During the school year, special education teachers will often visit the classroom of general education teachers to ensure IEPs are being followed with fidelity. *Id.* Both groups of instructors also use email as a communication modality to stay abreast of any developments or to monitor progress pursuant to an IEPs service delivery and annual goals. *Id.*
22. In addition to the presence of special education teachers who may support general education teachers in implementing a student's IEP, District employs five to six special education coordinators who support all staff and related service providers providing instruction and/or accommodations to a student with disabilities. *Id.* Coordinators meet with the Interim Special Education Director weekly and during those meetings they share information regarding their observations throughout the seven to eight schools in District that they cover. *Id.* Additionally, coordinators are expected to do annual reviews, triennial evaluations, approve IEPs, and provide a spot check to ensure that District is compliant. *Id.*

D. Student's Progress on the Math Goal

23. The IEP's annual math goal ("Math Goal") states:

- **Math Goal:** "By 5/16/24, in order for [Student] to work in the Food Services industry and live as independently as possible, using a calculator and manipulatives with guidance and support (visual samples, cubes, fill in the blank, step by step visual and verbal directions), solve linear equations in one variable (per CDE 2020 Colorado Academic High School Mathematic Standards with Extended Evidence Outcomes (aka Modified Curriculum)) with 60% accuracy 4 out of 5 trials as determined by work samples."
 - **Objective 1:** "By 5/15/24, in order for [Student] to work in the Food Services industry and live as independently as possible, using a calculator and manipulatives with guidance and support, (visual samples, cubes, fill in the blank, step by step visual and verbal directions), solve addition and subtraction equations with 60% accuracy 4 out of 5 trials as determined by work samples."
 - **Objective 2:** "By 5/15/24, in order for [Student] to work in the Food Services industry and live as independently as possible, using a calculator and manipulatives with guidance and support, (visual samples, cubes, fill in the blank, step by step visual and verbal directions), solve multiplication and division equations with 60% accuracy 4 out of 5 trials as determined by work samples."

Exhibit A, pp. 113-114. The evaluation method for the Math Goal is "Work Samples." *Id.* at p. 112.

24. Parent's concern is that Student met the Math Goal and that it was not revised to meet Student's needs, indicating that from August 2023 through December 2023 Student never scored lower than 76 percent and "6/8 chances were 90% or higher." *Complaint*, p. 4. District concedes that "it did not review and revise the Student's IEP as soon as the Student met the goal as written in the May, 2023 IEP." *Exhibit M*, p. 1. District indicates that it convened two IEP meetings in April 2023 to review and revise the IEP, including the Math Goal. *Id.*
25. Parent reached out to School on August 3, 2023 and expressed concern because "it is hard to tell what is done and what is not" on the Math Goal. *Exhibit J*, p. 315. Parent met with Special Education Teacher on or about October 4, 2023 to discuss Student's progress on her annual goals. *Id.* at p. 350. Parent reached out to Special Education Teacher requesting progress updates from each of Student's general and special education teachers on or around October 3, 2023 and again on November 10, 2023. *Id.* pp. 345, 319. As of October 2023, Parent had only received one progress report which was provided at her request. *Exhibit J*, p. 324.
26. District submitted "Work Samples" showing Student scored 96 percent on an addition/subtraction trial dated August 25, 2023, 100 percent on an addition/subtraction trial dated September 6, 2023, and 90 percent on an addition/subtraction trial dated September 13, 2023. *Exhibit O*, pp. 1-5. Student scored 100 percent on a multiplication/division trial on October 3, 2023, 76 percent on a multiplication/division trial on October 20, 2023, and 96 percent on a multiplication/division trial on November 2, 2023. *Id.* at pp. 6-13. Student's progress report show that Student met the Math Goal in December 2023. *Exhibit 1*, pp. 69, 99-100, 110-111).
27. Special Education Teacher said that Student met the Math Goal at some point in the fall of 2023, but it was not changed because extending Student's learning by allowing her to engage in more trials over time with different variables aligned more with Student's service delivery and impact of her disability as opposed to writing an entirely new goal. *Interview with Special Education Teacher*.
28. Based on these facts, including District's admission, the state complaints officer ("SCO") finds that Student met the Math Goal by December 2023.
29. The IEP's annual review was due on or before April 12, 2024. *Exhibit A*, p. 97. The IEP Team convened on April 1 and April 29 to review and revise the IEP. *Id.* at pp. 1-33. The Math Goal was updated as part of this annual review. *Id.* at pp. 9, 23.

E. IEP Implementation

30. On September 6, 2023, Special Education Teacher sent an introductory email to all of Student's teachers introducing them to Student and discussing her various needs under the IEP. *Exhibit J*, p. 377; *Interview with Special Education Teacher*. The email discussed Student's

assistive technology accommodation and an attached IEP snapshot which more thoroughly listed all of Student's accommodations and modifications. *Id.*

31. The IEP requires 215 minutes per week of direct math instruction provided by a special education teacher outside the general education classroom. *Exhibit A*, p. 121. Parent's concern is that Student did not receive these services across four months. *Complaint*, pp. 3-4. District concedes that it did not provide these services to Student from January 9, 2024 through April 29, 2024. *Exhibit M; Exhibit N; Complaint*, p. 4; *Interviews with Parent, Interim Special Education Director, and Special Education Teacher*.
32. Student was enrolled in a senior level personal finance class from January 2024 to May 2024. *Exhibit G; Interviews with Parent and Special Education Teacher*. The decision to enroll Student in this class, instead of basic algebra that Student had been enrolled in from August 2023 through December 2023, was due in part to Parent's desire for her to have opportunities to understand the basics of financial literacy and to participate in activities such as opening a bank account and paying bills. *Interview with Parent*.
33. There was an "oversight" when the IEP Team wrote the IEP in April of 2023 because the team assumed Student would remain in basic algebra where she was receiving direct specialized math instruction. *Interview with Special Education Teacher*. Enrollment in personal finance class was at odds with the direct specialized math minutes that Student should have received because the structure of the finance class had been set up to only provide indirect specialized math instruction. *Id.* Special Education Teacher said Student's IEP Team should have opted for Student to receive indirect services if she was enrolled in personal finance. *Id.*
34. Based on these facts, the SCO finds that Student did not receive direct math instruction consistent with the IEP from January 9, 2024 through April 29, 2024, a total of 15 weeks. *Exhibit H; Exhibit N*.
35. To remedy this noncompliance, District offered Student 54 hours of compensatory math services and, at Parent's request, switched Student's case manager. *Exhibit M*, p. 2; *Exhibit N, Reply*, p. 2. Parent has not yet responded to District's offer. *See Exhibit N*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District did not review and revise the IEP to address Student's progress on the Math Goal, from January 2024 to April 2024, as required by 34 C.F.R. § 300.324(b). This resulted in a denial of FAPE.

Parent's concern is District did not review and revise the IEP to address the fact that Student met the Math Goal during the fall of 2023. (FF # 24).

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. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability and thereby enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. § 300.320(a)(2). Annual goals describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. *Letter to Butler*, 213 IDELR 118 (OSERS 1988).

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress. *Andrew*, 137 S. Ct. at 998. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA contemplates that a student's IEP may need to be reviewed and revised more frequently to address, in part, lack of expected progress toward the annual goals, a child's anticipated needs, or other matters. *See* 34 C.F.R. §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994. The U.S. Department of Education confirmed that an "IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it." *Questions and Answers on Andrew F. v. Douglas Ctny. School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). This includes monitoring and revising an IEP as necessary, particularly if progress that is appropriate given a child's circumstances is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.* Although a school district remains responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability may request an IEP meeting at any time to discuss concerns with their child's special education program. *Id.*

Here, District concedes the IEP team did not meet to review and revise the IEP as soon as Student met the Math Goal. (FF # 24). Student met the Math Goal by December 2023. (FF # 26-27). Parent reached out to District staff in August, October, and November because it was "hard to tell what is done and what is not" on the Math Goal. (FF # 25). Indeed, Parent was not receiving progress reports on the Math Goal consistent with the IEP. (FF #s 25, 26). Despite knowledge of Student meeting the Math Goal and Parent raising concerns, the IEP Team did not convene until April 2024 to review and revise the IEP, including the Math Goal. (FF # 29). For these reasons, the SCO finds and concludes that District did not meet its obligation to review and revise the IEP to address Student's anticipated needs and other matters (i.e., Student meeting the Math Goal), as required by 34 C.F.R. § 300.324(b). This results in procedural noncompliance of the IDEA.

Procedural noncompliance of the IDEA may result in compensatory remedies only to the extent that they (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); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, the noncompliance significantly impeded Parent’s opportunity to participate in the decision-making process. First, District was not providing progress reports to Parent on the Math Goal consistent with the IEP. (FF #s 24-26). Second, District did not timely respond to the concerns Parent raised with respect to Student’s progress on the Math Goal by convening an IEP Team meeting to review and revise the Math Goal. (FF #s 24-29). Thus, the SCO finds and concludes that the procedural noncompliance resulted in a denial of FAPE. *See Knable*, 238 F.3d at 765-66. Because District reviewed and revised the Math Goal in April 2024, and included Parent in the process, no award is needed here to remedy the noncompliance.

Conclusion to Allegation No. 2: District did not properly implement Student’s IEP from December 2023 to April 2024, as required by 34 C.F.R. § 300.323. A denial of FAPE occurred.

A. IEP Implementation: Legal Requirements

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas 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).

A 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.* § 300.323(c)(2). To satisfy the implementation requirement, a 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.” *Id.* § 300.323(d).

B. IEP Accessibility and Responsibilities

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d).

Here, District uses Enrich and its IEP snapshot feature to ensure all instructors who would be working with students with disabilities had access to their IEPs, accommodations, and modifications. (FF #s 19-20, 30). Special Education Teacher and Student’s other related service providers had access to Student’s 2023 IEP consistent with this practice. (FF #s 20, 30). As a practice, special education coordinators are present at School and throughout the classrooms to assist with the implementation of IEPs and the monitoring and supervision of staff. (FF #s 15-17, 22). Special Education Teacher also attended Student’s IEP meetings for the 2023-2024 school year. (FF # 21). District also held various trainings to ensure that each special education teacher and service provider were aware of their responsibilities under student’s IEPs. (FF #s 15-17). For these reasons, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323(d).

C. IEP Implementation

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c).

The IEP requires 215 minutes per week of direct math instruction provided by a special education teacher outside the general education classroom. (FF # 12). Parent’s concern is that Student did not receive these services across four months. (FF # 32-34). District admits that Student did not receive these services from January 9, 2024 through April 29, 2024 (a total of 15 weeks). (FF # 35).

For this reason, the SCO finds and concludes that District did not implement the IEP in this respect, as required by 34 C.F.R. § 300.323(c)(2).

D. Materiality of Not Implementing the IEP

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

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

Here, District did not provide Student with 3,225 minutes (53.75 hours) of math instruction required by the IEP across four months of the school year. (FF #s 35-37). This occurred after Student met the Math Goal in the IEP by December 2023, and before the IEP Team reviewed and revised the Math Goal in April 2024. (FF #s 26-29, 35). This noncompliance is compounded by the fact that, although Student met her Math Goal in the IEP by December 2023, the IEP Team did not convene until April 2024 to review and revise the Math Goal (FF #s 24-29). In addition to implementing the math instruction to advance appropriately toward attaining the Math Goal, the IEP Team was required to ensure the Math Goal was appropriately ambitious with an opportunity for Student to meet challenging objectives. For these reasons, the SCO finds and concludes the noncompliance is material and results in a denial of FAPE.

E. Compensatory Services

Compensatory services are an equitable remedy designed to restore a student to the position they would be in if the noncompliance had not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018). The purposes of the IDEA guide compensatory awards, and those purposes include providing children with disabilities a FAPE that meets the particular needs of each child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the SCO finds and concludes that compensatory services are required to restore Student to the position she would have been had the noncompliance not occurred. (FF #s 33-35). District has offered Student 54 hours of compensatory math services. (FF # 35). Parent has not yet responded to this offer. (FF # 35). The SCO finds and concludes that the District’s offer of 54 hours of compensatory math services is appropriate to ensure Student receives the services to which she was entitled.

Systemic IDEA Violations: This investigation does not demonstrate noncompliance that is systemic and will likely impact the future provision of services for all children with disabilities in District if not corrected.

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

Here, there is nothing in the Record to demonstrate that District’s noncompliance with 34 C.F.R. § 300.324(b) and 34 C.F.R. § 300.323 is systemic in nature. District has relevant processes and procedures in place to ensure IDEA-eligible children receive FAPE in these respects. (FF #s 15-22). The SCO attributes the failure to review and revise to District not reporting progress to Parent consistent with the IEP and simply not responding to Parent’s concerns regarding Student’s rate of progress. (FF #s 25-29). Regarding implementation, an “oversight” specific to Student resulted in the IEP Team not modifying the IEP to reflect Student’s enrollment in personal finance and the resulting noncompliance. (FF # 35). For these reasons, the SCO does not find the noncompliance is systemic and likely to impact the future provision of services for all children with disabilities in District.

REMEDIES

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

1. Reviewing and Revising the IEP to address anticipated needs and other matters, as required by 34 C.F.R. § 300.324(b).
2. Implementing the IEP, as required by 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Wednesday, September 25, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Interim Special Education Director, Special Education Coordinator, Principal, and Special Education Teacher must review this Decision. This review must occur no later than **Tuesday, October 1, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Tuesday, October 8, 2024**. If the individuals identified in this paragraph are no longer employed by District when the review occurs, staff occupying identical roles must review the Decision. If District no longer has any of these roles, District may substitute the individual occupying the role with similar responsibilities.

3. Compensatory Services

- a. Consistent with District’s proposed plan, Student shall receive **54 hours of direct specialized math instruction outside the general education classroom**. This instruction must be provided by an appropriately licensed special education teacher. These services must be designed to advance Student toward current annual IEP goals.
- b. All compensatory services must be completed **no later than one year from the issue date of this Decision**.
- c. By **Wednesday, September 25, 2024**, District shall schedule compensatory services in collaboration with 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. District shall submit the schedule of compensatory

services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Wednesday, October 2, 2024**. If District and Parent cannot agree to a schedule by Wednesday, October 2, 2024, the CDE will determine the schedule for compensatory services by **Friday, October 18, 2024**.

- i. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with parents and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parent may opt out of some or all compensatory services.
- d. Monthly consultation between the provider(s) delivering compensatory services and Student's case manager shall occur to evaluate Student's progress toward IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred by the **second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- e. To verify that Student has received the services required by this Decision, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. The District shall communicate with the District as necessary to obtain this information.
 - i. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the monthly service log.
- f. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before

and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to receive during the school day (including time in general education). If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

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

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

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

CONCLUSION

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

Dated this 26th day of August, 2024.



Tiera Brown
State Complaints Officer

APPENDIX

Complaint, pages 1-7

- Exhibit 1: IEPs and progress monitoring

Response, pages 1-4

- Exhibit A: IEPs for 2023-2024 school year
- Exhibit B: Eligibility
- Exhibit C: PWNs
- Exhibit D: Service logs
- Exhibit E: Notice of meetings
- Exhibit F: Attendance logs
- Exhibit G: Student transcript
- Exhibit H: Calendar
- Exhibit J: Email correspondence
- Exhibit M: Position statement
- Exhibit N: Email re compensatory services

Reply, pages 1-2

Telephone Interviews

- Parent: August 8, 2024
- Interim Special Education Director: August 8, 2024
- Special Education Teacher: August 8, 2024