

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

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**State-Level Complaint 2024:501  
Denver Public Schools**

**DECISION**

**INTRODUCTION**

On January 3, 2024, the parent (“Parent”) of a student (“Student”) currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three 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 SCO has jurisdiction to resolve the Complaint.

On January 12, 2024, the parties agreed to participate in mediation and to toll the investigation timelines for that purpose. Mediation resulted in an impasse, and the SCO resumed the investigation on February 16, 2024. However, Parent filed a due process complaint on February 22, 2024, which contained the same allegations raised in the Complaint. Because the complaints raised identical issues, the Colorado Department of Education (“CDE”) held the Complaint in abeyance pending the outcome of the due process complaint. On May 1, 2024, the due process complaint was dismissed. The SCO resumed the investigation on May 2, 2024.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), 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 January 3, 2023 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.

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

## SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to provide Parent with periodic reports on Student’s progress from January 2023 through February 2023, in violation of 34 C.F.R. § 300.320(a)(3)(iii);
2. Failed to properly implement Student’s IEP, specifically by failing to provide compensatory educational services, from April 2023 to present, in violation of 34 C.F.R. § 300.323; and
3. Failed to develop, review and revise an IEP that was tailored to meet Student’s individual needs, specifically in the areas of English proficiency and communication, from January 2023 through May 2023, in violation of 34 C.F.R. § 300.324(a)(2).

## FINDINGS OF FACT

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

### **A. Background**

1. Student attended pre-kindergarten at a District elementary school (“School”) during the 2022-2023 school year *Interview with Parent; Response*, pp. 1-2. He did not return to School following an incident on or around February 3, 2023. *Interview with Parent*. On February 21, 2023, Parent notified the District that she was withdrawing Student from School. *Id.; Response*, p. 2.
2. Student returned to a separate District elementary school in January 2024, where he recently completed kindergarten. *Interview with Parent*. Student did not attend school between February 2023 and January 2024 but, instead, received private therapies and services at home. *Interview with Parent*.
3. Student currently qualifies for special education and related services under the disability categories of Developmental Delay and Speech or Language Impairment. *Exhibit A*, p. 1. He has a medical diagnosis of Autism Spectrum Disorder. *Interview with Parent*.
4. Student is a happy boy who loves to be silly and play with friends. *Id*. He enjoys playing with cars, chasing his dog, and watching musicals. *Reply*, p. 2. Student does not speak but communicates using eye contact, touch, and expressions. *Interviews with Parent and Speech Language Pathologist (“SLP”)*. He also utilizes an AAC device to communicate in both English and Spanish. *Id*.

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

## **B. Progress Monitoring**

5. At School, the District served Student in a Model 1 inclusive classroom taught by a licensed special educator. *Response*, p. 1. Student's teacher ("Pre-K Teacher") was on medical leave during part of the Fall 2023 semester. *Interviews with Multi-Intensive Autism ECE Teacher ("ECE Teacher") and Parent*.
6. When the 2022-2023 school year began, Student's IEP dated February 22, 2022 ("2022 IEP") was in effect. See *Exhibit A*, pp. 23-39. This IEP remained in effect until Parent withdrew Student from School in February 2023. *Id.* at pp. 1-22.
7. The 2022 IEP contained two annual goals targeting Student's preacademic skills and one annual goal related to communication. *Id.* at pp. 31-32. Each goal contained multiple objectives. *Id.* The 2022 IEP indicated progress reports would be sent home "three times yearly" and "upon parent request." *Id.* at p. 31.
8. In her Complaint, Parent alleged she did not receive any progress reports during the 2022-2023 school year until she requested one in late January 2023. *Complaint*, p. 4. Even then, Parent said the progress report lacked data. *Id.* The District argued that the language of Student's IEP did not specifically require a progress report to be sent in either January or February, but the District sent Parent a progress report nonetheless. *Response*, pp. 2-3.
9. Pre-K Teacher emailed a progress report to Parent on January 23, 2023, after Parent expressed concern about not receiving progress reports. *Exhibit J*, p. 78. The progress report did not indicate Student's overall progress on the first preacademic goal. *Id.* That goal contained six objectives, four of which were measured by an occupational therapist or physical therapist. *Id.* Those objectives contained both supporting statements and data points showing Student's progress. *Id.* The two objectives to be measured by Pre-K Teacher or other classroom staff only indicated "progress made" without any narrative or supporting data. *Id.*
10. The second preacademic goal lacked any description or datapoints showing Student's progress. *Id.* Indeed, there was no data after February 20, 2022, and no narrative statements. *Id.*
11. Student's communication goal contained both supporting data and statements showing Student's achievement towards that goal. *Id.*
12. The same incomplete progress monitoring information was also included in the draft of Student's IEP provided to Parent in late February. *Exhibit A*, pp. 13-15.

## **C. Student's Communication Needs**

13. In February 2023, the District convened Student's IEP Team for his annual review. *Exhibit D*, p. 2. Between February 2023 and April 2023, Student's IEP Team revised drafts of his IEP, and

District staff answered Parent's questions about the IEP. *Interview with Parent; Exhibit J*, pp. 15-23. That IEP was finalized in early May 2023 ("2023 IEP"). *Exhibit D*, p. 25.

14. The 2023 IEP referenced Student's unique communication needs as follows:

- Present Levels of Educational Performance Summary: "[Student] has made good progress using icons for preferred objects or activities. When given a visual choice in a field of 2 he will look at or touch what he wants. [Student] is using a communication board with more consistency after having models. He recently sequenced 3 touches to create a sentence (I want. . .). This skill is inconsistent but he is paying more visual attention to communication materials. . . ." *Id.* at p. 4.
- Student Needs and Impact of Disability: "[Student's] decreased functional communication skills impact him in the classroom setting as he has difficulty expressing his wants and needs as well as showing what knowledge he has gained. Without direct support he has difficulty appropriately interacting with peers and adults." *Id.* at p. 8
- Consideration of Special Factors:
  - "[Student] is a non-verbal student that requires maximal assistance with communication. He will require low to high tech assistive or alternative communication aids for basic functional communication. Low tech materials will consist of visual symbols printed and used to communicate. [Student] has a dedicated iPad with Touch Chat software loaded that was obtained by the family. [Student] should have access to this form of communication or an equivalent." *Id.* at p. 9.
  - This paragraph was included under the subparts for unique communication needs and assistive technology needs. *Id.*
- Annual Goals:
  - Goal 3: "By 2/2024 [Student] will improve functional communication as shown by his ability to label and request preferred items or activities when using a variety of communication strategies including signs, gestures, pictures, voice or augmentative communication from 0-3/5 to 4/5 opportunities when given maximum models and prompts as measured by the speech pathologist data collection." *Id.* at p. 11.
- Accommodations: Communication-related accommodations included, in part, access to visual communication materials including communication and core boards and access to voice output communication device. *Id.* at p. 14.

15. The 2023 IEP also specified that Student would receive 240 minutes per month of direct speech/language instruction provided by an SLP. *Id.* at p. 18.

16. In her Complaint, Parent contends the District discouraged her from including the AAC device in Student's IEPs and from bringing Student's AAC device to School. *Complaint*, p. 6; *Interview with Parent*.

#### **D. Compensatory Education**

17. In April 2023, the District proposed providing Student with 96 hours of compensatory services from an early childhood special educator. *Response*, p. 3; *Exhibit 4*, pp. 1-2. The compensatory services were designed to make up for the lapse in specialized instruction Student experienced in Fall 2023 due to Pre-K Teacher's medical leave. *Exhibit 4*, p. 1.

18. ECE Teacher completed the District's Considerations for Compensatory Education Form around April 24, 2023, and provided that form to Parent, in accordance with the District's procedure for determining compensatory services. *Id.* at pp. 1-2; *Exhibit 1*, pp. 1-11. ECE Teacher took these steps on behalf of Pre-K Teacher. *See Exhibit 4*, pp. 1-2.

19. That form identified ECE Teacher and Special Education Instructional Specialist ("SEIS") as Parent's points of contact for questions regarding the District's proposal. *Id.* at p. 2.

20. Per District procedure, District staff should have issued a prior written notice ("PWN") documenting the determination regarding Student's compensatory services. *Exhibit 1*, p. 5. The District acknowledges the PWN was not prepared. *Response*, p. 3. According to the District, the lack of documentation had no bearing on the District's intent to fulfill Student's compensatory services. *Id.*

21. On April 28, 2023, Parent contacted SEIS with questions regarding the compensatory services. *Exhibit J*, p. 121. SEIS directed Parent to the District's "team for compensatory services" and provided the email address for District's Special Education Compliance Specialist ("Compliance Specialist"). *Id.* Unfortunately, SEIS accidentally misspelled Compliance Specialist's email address. *Id.*; *Response*, p. 4. Parent's emails to Compliance Specialist were not delivered using that incorrect email address. *Response*, p. 4.

22. Parent asserted that she never received any additional information from the District about scheduling Student's compensatory services despite multiple attempts to contact the District. *Reply*, p. 2; *Interview with Parent*.

23. The District concedes that Student has not yet received the compensatory services. *Response*, pp. 4, 9. To date, Student's compensatory services have not been scheduled. *Interview with Parent*.

#### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District failed to provide Parent with periodic reports on Student’s progress in January and February 2023, as required by 34 C.F.R. § 300.320(a)(3)(iii). This resulted in a denial of FAPE.**

The first allegation in Parent’s Complaint concerns Student’s progress monitoring during the 2022-2023 school year. Parent asserted that the District did not provide her with any progress reports until late January 2023. (FF # 8.) Even then, Parent alleged that the progress report was incomplete. (*Id.*) The SCO has only analyzed whether the District provided Parent with adequate progress monitoring in January and February 2023. The prior months in the school year fall outside the relevant time period of this investigation.

**A. Student’s Progress Reports**

The IDEA requires school districts to provide periodic reports on the progress a student is making towards the student’s annual goals. 34 C.F.R. § 300.320(a)(3).

As the Findings of Fact demonstrate, the District failed to monitor Student’s progress. The progress report provided to Parent in January 2023 lacked sufficient data and information to allow Parent to ascertain the level of Student’s progress. Statements such as “progress made” did not allow Parent to know whether Student was making progress as expected.

The District argued that Student’s IEP did not technically require a progress report to be provided in January or February 2023. (FF # 8.) The SCO agrees that Student’s IEP required only that progress reports be provided three times a year or upon parent request. (FF # 7.) Consistent with Student’s IEP, the District provided Parent a progress report in January 2023 when she expressed concern about the lack of progress monitoring. (FF # 9.) That progress report made clear that Student’s classroom staff had not been monitoring his progress on his two preacademic goals. (FF #s 9, 10.) Though an occupational therapist tracked Student’s growth on two objectives, the remaining objectives were intended to be monitored by classroom staff. (*Id.*) That monitoring did not occur in Pre-K Teacher’s absence. (*Id.*) Though the District properly provided a progress report to Parent upon request in January 2023, the progress monitoring in that report was deficient. For this reason, the SCO finds and concludes that the District failed to provide Parent with periodic reports on Student’s progress in January and February 2023. This resulted in a procedural violation of 34 C.F.R. § 300.320(a)(3)(iii).

**B. Impact of the Procedural Violation**

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a denial of FAPE only if the procedural violation: (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a)(2).

Here, the District failed to adequately track Student’s progress on two of the three goals in his IEP for one semester of the 2022-2023 school year. (FF #s 8-10.) The lack of progress monitoring likely resulted from Pre-K Teacher’s medical leave. (FF # 5.) Her absence also resulted in a loss of specialized instruction. The loss of instruction increased the importance of adequate progress monitoring. Progress monitoring would have allowed Parent to better understand how Student was doing without his instruction and in Pre-K Teacher’s absence and would have allowed the District to better determine Student’s need for compensatory services at a later date. For these reasons, the SCO finds and concludes that the District’s procedural violation significantly impeded Parent’s opportunity to participate in the decision-making process, resulting in a denial of FAPE.

The lack of progress monitoring likely stemmed from Pre-K Teacher’s medical leave. But for Pre-K Teacher’s medical leave, the SCO has no reason to suspect that the violation would have occurred. The District has already awarded Student a significant amount of compensatory services to make up for the lack of instruction he received during Fall 2023. (FF # 17.) The SCO finds no additional remedy necessary to account for the lack of progress monitoring.

**Conclusion to Allegation No. 2: The District failed to properly implement Student’s 2023 IEP by neglecting to provide Student with compensatory services, as required by 34 C.F.R. § 300.323. This resulted in a denial of FAPE.**

The second allegation in Parent’s Complaint relates to the implementation of the compensatory services agreed on by the District and Parent. Parent asserted that the District has yet to provide the compensatory services to Student.

#### **A. Implementation of Compensatory Services**

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.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (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).

In April 2023, the District agreed to provide Student with 96 hours of specialized instruction to compensate Student for instruction he missed during Fall 2023 as a result of Pre-K Teacher’s medical leave. (FF # 17.) These compensatory services were designed to remedy the District’s failure to fully implement Student’s IEP during Fall 2023. (*Id.*) Based on these facts, the SCO construes the compensatory services as a component of Student’s IEP and analyzes this allegation as a failure to implement the IEP. *See Denver Pub. Schs.*, 112 LRP 12572 (CO SEA 2/18/22) (construing compensatory services as part of a district’s offer of FAPE and analyzing the district’s failure to provide those services as a failure to implement the IEP).

Here, the District conceded that it has not provided the compensatory services to Student. (FF # 23.) As such, the District still owes Student 96 hours of specialized instruction. The District's failure to provide these services resulted in a violation of 34 C.F.R. § 300.323.

### **B. Materiality of Failure to Implement**

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*, 502 F.3d at 822. The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail." *Id.* But a child's educational progress, or lack thereof, may indicate whether there has been more than a "minor shortfall in the services provided." *Id.*

Here, the District acknowledged that it failed to provide 96 hours of compensatory services. (FF # 23.) The District and Parent determined that these services were necessary to put Student in the place he would have been but for the District's failure to fully implement Student's IEP during Fall 2023. (See FF # 17.) This represents more than a minor discrepancy between what was offered and provided. For that reason, the SCO finds and concludes that that the District's failure was material and resulted in a denial of FAPE. However, given the compensatory services already awarded by the District, the SCO finds and concludes that no additional compensatory services are necessary.

### **Conclusion to Allegation No. 3: The District developed an IEP that was tailored to meet Student's individual communication needs, consistent with 34 C.F.R. § 300.324(a)(2).**

The final allegation in Parent's Complaint relates to the development of Student's 2023 IEP. Specifically, Parent contends the 2023 IEP was not tailored to Student's individual communication needs, because the District discouraged her from including Student's AAC device in his IEP and from bringing it to School. Many of Parent's supporting facts relate to the 2021-2022 school year and the first semester for the 2022-2023 school year. These time periods are beyond the scope of this Complaint. Therefore, the SCO has only addressed Parent's allegation from January 2023 through May 2023.

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*, 580 U.S. 386, 399 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process



complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.* If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Here, the concerns raised by Parent challenge only the sufficiency of Student's IEP.

#### **A. Communication Needs**

The IDEA requires IEPs to consider each child's unique communication needs and whether the child needs assistive technology devices and services. 34 C.F.R. § 300.324(a)(2).

Here, Parent contends the 2023 IEP did not capture Student's unique communication needs. (FF # 16.) The SCO disagrees. As detailed in the Findings of Fact, the 2023 IEP repeatedly references Student's functional communication challenges and his need for low- or high-tech assistive communication devices. (FF # 14.) It does not matter whether these references were included in earlier drafts of Student's IEP; only the content of the final IEP needs to comply with the IDEA.

Additionally, nothing in the 2023 IEP precludes Student from using his AAC device. (*Id.*) The 2023 IEP expressly acknowledges that Student has an iPad with TouchChat software that he uses to communicate. (*Id.*) The 2023 IEP required that he be provided with that iPad or an equivalent device to communicate. (*Id.*)

For these reasons, the SCO finds and concludes that the 2023 IEP was tailored to Student's unique communication needs, consistent with 34 C.F.R. § 300.324(a)(2). No violation of the IDEA occurred.

**Systemic Nature of Non-Compliance: This investigation did not identify any noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.**

Pursuant to its general supervisory authority, 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, the District's inadequate progress report in January 2023 stemmed from Pre-K Teacher's medical leave in Fall 2022. (FF #s 5, 9.) And a typographical error (coupled with the lack of a PWN) resulted in Student not receiving his compensatory services. (FF #s 20, 21.) Based on the Findings of Fact, the SCO does not find the violations are systemic or likely to impact the future provision of services for all children with disabilities in the District.

## REMEDIES

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

- a. Failing to provide Parent with periodic reports on Student's progress, in violation of 34 C.F.R. § 300.320(a)(3)(iii); and
- b. Failing to properly implement Student's 2023 IEP by neglecting to provide Student with the agreed-upon compensatory services, in violation of 34 C.F.R. § 300.323.

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

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

- a. By **Friday, July 19, 2024**, the 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 the 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 the District's timely correction of the areas of noncompliance.

### **2. Final Decision Review**

- a. Director of Special Education, as well as the current Senior Manager and SEIS overseeing School, must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.320, 300.323. This review must occur no later than **Monday, August 12, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, August 16, 2024**.

### **3. Compensatory Education Services**

- a. Student shall receive **96 hours of specialized instruction** provided by a District special education teacher or through a contract with a special education teacher at the District's expense. All 96 hours must be completed by **Monday, June 16, 2025**, though Parent and the District are free to allocate the services however they see fit. **These 96 hours of specialized instruction are the same compensatory services already agreed to by the District and Parent.** No additional compensatory services have been awarded by this Decision; instead, this Decision merely directs the District to do what it has already promised to do.
- b. By **Friday, July 19, 2024**, the District shall issue a PWN documenting the compensatory services already agreed upon by Parent and the District in

accordance with the District's written procedures. The District shall provide a copy of this PWN to the CDE by **Monday, July 22, 2024**.

- c. By **Monday, September 16, 2024**, the District shall schedule the compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via email, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule—including the dates, times, and durations of planned sessions, to the CDE no later than **Friday, September 20, 2024**. If the District and Parent cannot agree to a schedule by Friday, September 20, 2024, the CDE will determine the schedule for compensatory services by **Friday, October 11, 2024**.
  - i. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempted to meet with Parent and documented such efforts. A determination that the District diligently attempted to meet with Parent and, thus, should be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parent may opt out of some or all compensatory services.
- d. To verify that Student has received the compensatory services required by this Decision, the District must submit records of the services provided to the 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.
- e. These 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 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 (including time in general education). If for any reason the District fails to provide a scheduled session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consultation with Parent, as well as notify the CDE of the change in the monthly 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  
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 16th day of June, 2024.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-12

#### Response, pages 1-10

- Exhibit A: IEPs
- Exhibit B: Evaluation documents
- Exhibit C: PWNs
- Exhibit D: IEP Team meeting documents
- Exhibit E: Service logs
- Exhibit F: Attendance records
- Exhibit G: Progress reports and data
- Exhibit H: District's calendar
- Exhibit I: District policies and procedures
- Exhibit J: Email correspondence
- Exhibit K: Witness information
- Exhibit L: Verification of delivery of response to Parent

#### Reply, pages 1-9

- Exhibit 1: Picture
- Exhibit 2: IEP
- Exhibit 3: IEP
- Exhibit 4: Compensatory services documents
- Exhibit 5: Email correspondence
- Exhibit 6: Pictures of AAC device
- Exhibit 7: Pictures of AAC device
- Exhibit 8: Supplemental email from Parent

#### Telephone Interviews

- ECE Teacher: June 3, 2024
- SLP: June 3, 2024
- Parent: June 3, 2024