

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

**State-Level Complaint 2024:524
Arapahoe County School District 6**

DECISION

INTRODUCTION

On February 23, 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 Arapahoe County School District 6 (Littleton Public Schools) (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

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. 34 C.F.R. §300.153(c). Accordingly, this investigation will be limited to the period of time from February 23, 2023 to the present for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide Student the specialized instruction and related services required by her IEP from February 23, 2023 and May 25, 2023.

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.

FINDINGS OF FACT

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

A. Background

1. Student is a twenty-year-old young woman enrolled in the District's secondary transition program. *Interviews with Director of Student Support Services ("Director") and Parent.*
2. Student is eligible for special education and related services under the disability category of Autism Spectrum Disorder ("ASD"). *Exhibit A, p. 1.*
3. Student is a friendly young woman with a great sense of humor. *Arapahoe County Sch. Dist. 6, p. 3, ¶ 4 (SEA CO 12/8/23) [hereinafter Prior Decision].* She enjoys being around her peers and excels at advocating for her needs. *Id.* Student has difficulty navigating social situations and staying emotionally regulated. *Id.* Student's social struggles and frequent seizures impact her ability to participate in the transition programming. *Id.*

B. Prior State Complaint

4. In October 2023, Parent filed a state-level complaint ("Prior Complaint") against the District. *Id.* at p. 1. The Prior Complaint alleged, in part, that the District failed to properly implement Student's IEP during the 2022-2023 and 2023-2024 school years. *Id.* at pp. 1-2.
5. The investigation into the Prior Complaint considered whether the District failed to implement Student's IEP, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to educate Student in the least restrictive environment required by Student's IEP from October 2022 to present;
 - b. Failing to provide Parent periodic reports on Student's progress in or around May 2023; and
 - c. Failing to follow Student's behavior intervention plan ("BIP") on February 3, 2023 and February 9, 2023.

Id.

6. Ultimately, the SCO determined that the District did not properly implement Student's IEP during Spring 2023 and Fall 2023, by educating Student in a more restrictive

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

environment than required by her IEP. *Id.* at pp. 12-13. Though Student’s IEP required her to spend time in general education through community outings, Student was isolated in a District administrative building (“Administrative Building”) instead. *Id.* This violated 34 C.F.R. § 300.323 and resulted in a denial of FAPE. *Id.* To remedy this violation, the SCO awarded Student 200 hours of transition services. *Id.* at pp. 14, 21.

7. As part of the implementation analysis, the SCO concluded that the District staff were aware of Student’s IEP, consistent with the requirements of 34 C.F.R. § 300.323(d). *Prior Decision*, p. 12.
8. The Prior Decision did not determine whether the District provided Student’s related services during Spring 2023. *See id.* at pp. 1-2, 12-13.
9. Parent’s Complaint now asserts that the District failed to provide Student with the specialized instruction and related services required by her IEP in Spring 2023. *Complaint*, pp.1-2.

C. Transition Program

10. Typically, the District operates the transition program out of a single building (“Transition Headquarters”). *Prior Decision*, p. 3, ¶ 5. Transition students begin their day at Transition Headquarters, where staff pre-teach students on specific skills being targeted that day. *Id.* Many students then spend a portion of their day in the community before returning to the Transition Headquarters for debriefing and dismissal. *Id.*
11. The transition program strives to integrate students’ related services into their daily programming and activities. *Interview with Director*. In high school, a student might move from one space to another and receive services led by a related services provider. *Id.* In the transition program, staff work to create environments and experiences where students can learn and work on specific skills. *Id.* This helps prepare students for the adult world, where skills are not isolated but, instead, integrated into daily life. *Id.*
12. The District expects the transition program’s related service providers to log the services they provide to students, even where those services are integrated into the students’ day. *Id.* Additionally, the District has encouraged the use of collaborative service logs, where staff individually track their services in a single document. *Id.* This allows teams to collectively monitor progress, share resources, and maintain continuity across providers. *Id.*

D. Student’s IEP

13. During Spring 2023, Student’s IEP dated October 7, 2022 was in effect. *Exhibit A*, pp. 1-22. The IEP required Student to receive the following specialized instruction and related services:

- Transition Services
 - 1,300 minutes per week of direct transition services provided by a special education teacher or paraprofessional inside the general education classroom; and
 - 413 minutes per week of direct transition services provided by a special education teacher or paraprofessional outside the general education classroom.
- Speech Language Services
 - 120 minutes per month of direct speech language services provided by a speech language pathologist outside the general education classroom; and
 - 30 minutes per month of indirect speech language services provided by a speech language pathologist inside the general education classroom.
- Social Emotional Services
 - 120 minutes per month of direct social emotional services provided by a social worker outside the general education classroom; and
 - 30 minutes per month of indirect social emotional services provided by a social worker inside the general education classroom.
- Physical Motor Services
 - 600 minutes per semester of direct physical motor services provided by an occupational therapist or certified occupational therapy assistant outside the general education classroom.

Id. at p. 20-21. The IEP indicated that the social emotional services would target Student’s “goal of accurately interpreting a social situation and considering multiple perspectives.” *Id.* at p. 20.

E. Implementation of Student’s IEP in Spring 2023

14. In February 2023, the District unilaterally changed the length and location of Student’s transition programming due to Student’s frequent elopement. *Prior Decision*, p. 9, ¶ 39. Effective February 22, Student received three hours of transition services per day at the Administrative Building, for a total of 900 minutes (or 15 hours) per week. *Id.* Student no longer participated in activities at the Transition Headquarters or within the community. *Id.*

15. Director oversaw Student's programming at the Administrative Building. *Interview with Director*. The District pulled in administrative staff with backgrounds in special education to serve Student while she was at the Administrative Building. *Id.* Many of these staff members were former special education teachers who now served as special education coordinators for the District. *Id.* Additionally, one of the staff members was a Board Certified Behavior Analyst ("BCBA"), while another staff member was a retired teacher from the transition program. *Id.*
16. Though the District intended Student's placement at the Administrative Building to be short-term, Student remained in that placement until the end of the 2022-2023 school year. *Id.* at p. 9, ¶ 40.
17. Parent's Complaint questioned whether Student received her specialized instruction and related services between February 23, 2023 and May 25, 2023, when Student was placed at the Administrative Building. *Complaint*, pp. 1-2. The Prior Decision addressed implementation of Student's transition services *inside* the general education environment, so those services are not at issue in this investigation. *Prior Decision*, pp. 12-13.
18. The District created a weekly schedule detailing which staff members were with Student during her time in the Administrative Building. *Exhibit D*, pp. 9-14. Staff members also documented information from Student's day in a separate daily log. *Exhibit B*, pp. 1-6. There are no entries in Student's daily log after April 4, 2023. See *id.* at p. 1.
19. According to the daily logs, Student completed some transition lessons while at the Administrative Building (such as budgeting, creating an "About Me" presentation, delivering mail, completing clerical tasks, and selling concessions). *Id.* at pp. 1-6. The rest of the time, Student appeared to be either emotionally dysregulated, going on a walk, or experiencing a seizure. *Id.* It is unclear precisely how many minutes of transition services Student received each day during the three hours she was at the Administrative Building. *Id.* However, given that Student's IEP required only 413 minutes per week (or 82 minutes per day), the SCO finds the daily logs sufficient to show that the District provided Student the required transition services *outside* the general education environment while she was at the Administrative Building.
20. During interviews, Director conceded that Student did not receive her direct speech or motor services while she was at the Administrative Building. *Interview with Director*. The daily log supports this concession. *Exhibit B*, pp. 1-6. The log does not reflect that Student ever met with an occupational therapist (or certified occupational therapy assistant) or a speech language pathologist. See *id.* There is also no indication that any other staff member worked with Student to target those skills. *Id.*
21. In Spring 2023, Student's IEP required that she receive 120 minutes per month of direct speech language services provided by a speech language pathologist. *Exhibit*

A, pp. 20-21. The SCO finds that the District failed to provide Student with 240 minutes of direct speech language services between February 23 and May 25.

22. Additionally, Student's IEP required 600 minutes per semester of direct physical motor services provided by an occupational therapist or certified occupational therapy assistant. *Id.* at pp. 20-21. This equates to 120 minutes of motor services per month. See *id.* The SCO finds that the District failed to provide Student with 240 minutes of direct physical motor services between February 23 and May 25.
23. Finally, under the IEP, Student was to receive 120 minutes per month of direct social emotional services provided by a social worker. *Exhibit A*, pp. 20-21. Student's IEP indicated that the social emotional services would target Student's "goal of accurately interpreting a social situation and considering multiple perspectives." *Id.* at p. 20.
24. The daily log reflects that Student worked on sign language skills with BCBA and Special Education Coordinator ("Coordinator") on March 7 and March 9. *Exhibit B*, p. 4. BCBA also met with Student to discuss Student's concerns regarding her transition programming on March 21 and March 22. *Id.* at pp. 1-2. Based on the logs, Student did not receive any services from BCBA regarding interpreting a social situation or considering multiple perspectives. *Id.* at pp. 1-6. For this reason, the SCO finds that the District failed to provide Student with 240 minutes of direct social emotional services between February 23 and May 25.
25. In Spring 2023, the District acknowledged some gaps in the implementation of Student's IEP. *Interviews with Assistant Superintendent or Learning Services ("Assistant Superintendent") and Director*. On May 4, the District offered 266 hours of compensatory services to help Student recoup what was lost. *Id.*; *Exhibit G*, pp. 231-235. The District proposed providing these services during Summer 2023. *Id.* Ultimately, Parent rejected the District's offer, and no compensatory services were provided. *Interviews with Assistant Superintendent, Director, and 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 properly implement Student's IEP, in violation of 34 C.F.R. § 300.323. A denial of FAPE occurred.

The sole allegation in Parent's Complaint concerns the implementation of Student's IEP between February 23, 2023 and May 25, 2023. Specifically, Parent contends the District failed to provide Student with the specialized instruction and related services required by her IEP.

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 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.* To satisfy this obligation, each teacher and related services provider must be 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).

A. Knowledge of Student’s IEP

As a preliminary matter, the SCO must determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). In the Prior Decision, the SCO determined that staff working with Student were aware of her IEP and concluded that the District complied with 34 C.F.R. § 300.323(d). (FF # 7.)

B. Specialized Instruction

Student’s IEP required her to receive 413 minutes per week of direct transition services provided *outside* the general education environment. (FF # 13.) As detailed in the Findings of Fact, the transition services Student received at the Administrative Building satisfied the requirements of her IEP. (FF # 19.) No violation of the IDEA occurred with regard to Student’s specialized instruction.

C. Related Services

In Spring 2023, Student’s IEP required her to receive: (a) 120 minutes per month of direct speech language services, (b) 120 minutes per month of direct social emotional services, and (c) 120 minutes per month (or 600 minutes per semester) of direct physical motor services. (FF # 13.) The District conceded that Student did not receive direct speech language or physical motor services between February 23 and May 25. (FF # 20.) During this time, Student missed 240 minutes of speech language services and 240 minutes of physical motor services. (FF #s 21-22.)

Additionally, though Student received some instruction from BCBA, that instruction was not tailored to the areas of concern noted in Student’s IEP. (FF # 24.) Though the social emotional instruction was designed to help Student interpret social situations and consider multiple perspectives, BCBA worked with Student on sign language and her feelings regarding the changes to her transition services. (FF #s 23-24) As a result, the SCO finds that the District failed to provide Student with 240 minutes of social emotional services. (FF # 24.)

For these reasons, the SCO finds and concludes that the District failed to fully implement Student's IEP between February 23, 2023 and May 25, 2023, in violation of 34 C.F.R. § 300.323.

D. 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 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.” *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 failed to provide Student with all her related services for two months of the school year. (FF #s 17-24.) At the same time, Student had been removed from her participation in transition services with peers at the Transition Headquarters and in community outings. (FF # 6.) The District's failure was more than a minor discrepancy between what was required and what was provided. The SCO finds and concludes that failure to implement constituted a material failure that resulted in a denial of FAPE. This denial of FAPE entitles Student to an award of compensatory services. See *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

E. Compensatory Services

Compensatory services are an equitable remedy designed to restore a student to the position they would be in if the violation 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 District denied Student access to all related services for two months of the school year. (FF #s 17-24.) The SCO finds and concludes that an award of 120 minutes *each* of social emotional services, speech language services, and physical motor services

is necessary to restore Student to the position she would be in but for the District's violation.

Systemic IDEA Violation: This investigation does not demonstrate a violation that is systemic or likely to impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are "critical" to the State Enforcement Agency'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 violation stemmed from the District's unilateral decision to move Student to the Administrative Building and her continued placement there. Related service providers were not readily available once Student was moved to the Administrative Building, and no system was in place to ensure Student continued to receive her related services. However, the systemic concerns arising from the District's change to Student's placement have already been addressed and remedied by the Prior Decision. The District's failure to implement Student's related services was a secondary effect of that change of placement. Therefore, the SCO finds no additional systemic violation.

REMEDIES

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

- a. Failing to properly implement Student's IEP, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Tuesday, May 21, 2024**, the 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 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. Compensatory Education Services

- a. Student shall receive **120 minutes of indirect speech language services** provided by a District speech language pathologist in consultation with staff at Student's private day program ("Private Program") at the District's expense. All 120 minutes must be completed by **Friday, December 6, 2024**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward her IEP goal.
- b. Student shall receive **120 minutes of indirect social emotional services** provided by a District social worker in consultation with staff at Private Program at the District's expense. All 120 minutes must be completed by **Friday, December 6, 2024**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward her IEP goal.
- c. Student shall receive **120 minutes of indirect physical motor services** provided by a District occupational therapist in consultation with staff at Private Program at the District's expense. All 120 minutes must be completed by **Friday, December 6, 2024**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward her IEP goal.
- d. By **Friday, June 7, 2024**, the District shall schedule all compensatory services in collaboration with Parent and Private Program. 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 **Monday, June 10, 2024**. If the District and Parent cannot agree to a schedule by June 7, 2024, the CDE will determine the schedule for compensatory services by **Friday, June 21, 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.
- e. 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. The District must communicate with the selected provider to obtain this information.
- f. 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 consult with Parent and Private Program, 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 23rd day of April, 2024.

Ashley Schubert

Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-2

Response, pages 1-6

- Exhibit A: IEPs
- Exhibit B: Service logs
- Exhibit C: Blank
- Exhibit D: Student's schedule and attendance reports
- Exhibit E: District's calendar
- Exhibit F: District's policies and procedures
- Exhibit G: Correspondence
- Exhibit H: Witness information
- Exhibit I: Verification of delivery of Response to Parent
- Exhibit J: Other documents

Reply, pages 1-20

- Exhibit 1: Various supporting documents
- Exhibit 2: Various supporting documents
- Exhibit 3: Various supporting documents
- Exhibit 4: Various supporting documents
- Exhibit 5: Various supporting documents
- Exhibit 6: Various supporting documents
- Exhibit 7: Various supporting documents

Telephone Interviews

- Assistant Superintendent: April 8, 2024
- Director: April 8, 2024
- Parent: April 8, 2024