

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

**State-Level Complaint 2021:534
Durango School District 9-R**

DECISION

INTRODUCTION

On December 6, 2021, 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 Durango School District 9-R (“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.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (“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 December 6, 2020 through December 6, 2021 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 violated the IDEA and denied Student a free appropriate public education (“FAPE”) because the District:

1. Amended Student’s IEP between August 1, 2021 and October 27, 2021 without agreement from Parent and outside of an IEP Team meeting, in violation of 34 C.F.R. § 300.324(a)(6).

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.

2. Failed to provide Parent with a copy of Student’s new IEP in a timely manner between August 1, 2021 and November 10, 2021, in violation of 34 C.F.R. § 300.322(f).
3. Failed to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide Student the paraprofessional support required by his IEP between September 15, 2021 and October 22, 2021.
4. Failed to provide an interpreter for any IEP Team meetings held between August 1, 2021 and December 6, 2021, in violation of 34 C.F.R. § 300.322(e).

FINDINGS OF FACT

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

A. Background

1. Student is in seventh grade at a District middle school (“School”). *Interview with Parent.*
2. Student qualifies for special education and related services under the Multiple Disabilities eligibility category. *Exhibit A*, pp. 1-15.
3. Student is a happy, kind-hearted, and motivated young man. *Interviews with Case Manager, Parents, and Sister.* He loves being active, dancing, and eating. *Id.* His language skills present the biggest challenge at School. *Id.* Student is mostly non-verbal and uses an alternative communication device (“AAC”) to communicate with his teachers and classmates. *Interview with Case Manager.*
4. Student is an English-Language Learner (“ELL”), and his native language is Spanish. *Id.*; *Exhibit A*, p. 7. Both of Student’s parents (“Parents”) speak exclusively Spanish, while his adult sister (“Sister”) speaks both Spanish and English. *Interviews with Parents and Sister.*

B. January 2021 Reevaluation

5. Student completed sixth grade at School during the 2020-2021 school year. *Interview with Assistant Principal.*
6. The District reevaluated Student in January 2021. *See Exhibit L*, pp. 11-14.

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

7. On January 21, 2021, Student’s case manager at the time (“Prior Case Manager”) sent text messages in English to Sister proposing a date and time to review Student’s reevaluation and develop his IEP. *Exhibit I*, pp. 29-31. Prior Case Manager’s phone was experiencing difficulty receiving text messages, so School Psychologist—who speaks Spanish—called Parent to confirm the time for the IEP Team meeting. *Id.* Ultimately, Prior Case Manager scheduled the meeting for January 28, 2021 at 1:00 p.m. *Id.*

8. In her text messages to Sister, Prior Case Manager indicated that there would be an interpreter at the meeting, though she did not specify whether the interpreter would be a professional interpreter or not. *Id.* at p. 28.

C. January 2021 IEP Team Meeting

9. A multidisciplinary team (“MDT”) met on January 28, 2021 to review Student’s reevaluation and complete his eligibility determination. *Exhibit L*, pp. 5-10. The MDT found Student remained eligible for special education and related services under the Multiple Disabilities category. *Id.* at p. 5.

10. Immediately afterwards, a properly constituted IEP Team convened to develop Student’s IEP. *Interview with School Psychologist*. Both the eligibility meeting and the IEP Team meeting were held virtually. *Interviews with Parents and Sister*.

11. Though Sister was home at the time of the meeting, she was attending a virtual college class. *Id.* Therefore, Sister neither participated in the IEP Team meeting nor provided interpretation for Parents. *Id.*

12. The District did not provide a professional interpreter for the IEP Team meeting. *Interviews with Parents, School Psychologist, and Sister*. Instead, School Psychologist was available to provide interpretation for Parents. *Id.*

13. School Psychologist is “fairly fluent” in Spanish but acknowledged he has difficulty interpreting special education terminology. *Interview with School Psychologist*. When he acts as an interpreter, School Psychologist generally reminds District staff to slow down and pause to allow him to provide consecutive interpretation of all the information shared at the meeting. *Id.*

14. School Psychologist could not remember whether he provided interpretation at the January 2021 IEP Team meeting, though he recalled acting as an interpreter for Parents at prior IEP Team meetings. *Id.* Additionally, School Psychologist was unable to recall whether Sister provided any interpretation at the IEP Team meeting, only noting that she generally attended the meetings. *Id.*

15. Parents, however, remembered School Psychologist offering to interpret or explain anything they did not understand in the meeting. *Interview with Parents*. Per Parents’ recollection, School Psychologist did not provide consecutive interpretation of the meeting. *Id.*

16. The SCO attempted to interview Prior Case Manager to ask about interpretation of the January 2021 IEP Team meeting. The District contacted Prior Case Manager, though she was not initially cooperative in scheduling her interview. Ultimately, Prior Case Manager was not timely made available for an interview. The District declined to provide the SCO with Prior Case Manager's contact information. As a result, the SCO was unable to interview Prior Case Manager.

17. In the Response, the District indicated School Psychologist and Sister provided interpretation at the IEP Team meeting. However, no evidence in the record confirmed this statement. Indeed, the evidence in the record suggests that neither individual acted as an interpreter at that meeting. *Interviews with Parents, School Psychologist, and Sister*. Without any contrary evidence in the record, the SCO finds Parents' account of the IEP Team meeting to be the most credible.

18. Without adequate interpretation, Parents did not understand that changes were being made to Student's paraprofessional support. *Interview with Parents*. Had Parents known the IEP Team was considering reducing Student's support, Parents would have opposed such a change and advocated that Student retain the level of support required by his January 30, 2020 IEP ("2020 IEP"). *Id.*

D. Student's 2021 IEP

19. The January 2021 IEP Team meeting resulted in the IEP dated January 28, 2021 ("2021 IEP"). *Exhibit A*, pp. 1-15.

20. The section of the 2021 IEP regarding present levels of performance indicated that Student was using his AAC to "engage in age-appropriate activities with prompting." *Id.* at p. 5. Student would "work hard on activities with support" but struggled to advocate for himself. *Id.*

21. The 2021 IEP acknowledged that, as a result of his disabilities, Student struggled with general academic tasks and required modifications and accommodations to be able to participate in the general education classroom in all subjects, except P.E. *Id.* at p. 6. The 2021 IEP noted that Student:

need[ed] the assistance of a 1on1 who [was] able to support him with complex directions, breaking assignments into smaller pieces, assistance in writing or typing to make sure things are written appropriately, read all text/directions to him, prompt [Student] to get started on tasks, prompt [Student] to continue working on tasks, and guiding [Student] through the task to complete it at his ability.

Id.

22. The 2021 IEP contained four annual goals in the areas of reading, writing, math, and communication. *Id.* at pp. 7-9.

23. The 2021 IEP identified extensive accommodations designed to help Student access the general education curriculum. *Id.* at pp. 9-10. The curriculum was modified to Student's educational and functional level. *Id.*

24. Under the 2021 IEP, Student received the following special education and related services:

- Specialized Instruction:
 - Reading Comprehension: 60 minutes per week of direct specialized instruction in reading comprehension provided by a special education teacher outside the general education classroom;
 - Math: 60 minutes per week of direct specialized instruction in math provided by a special education teacher outside the general education classroom; and
 - Written Expression: 30 minutes per week of direct specialized instruction in written expression provided by a special education teacher outside the general education classroom.
- Speech:
 - 120 minutes per month of direct speech services outside the general education classroom; and
 - 60 minutes per month of indirect speech services outside the general education classroom.
- Occupational Therapy:
 - 60 minutes per month of direct occupational therapy services outside the general education classroom; and
 - 60 minutes per semester of indirect occupational therapy services outside the general education classroom.
- Paraprofessional Support: 1,300 minutes per week of direct classroom instruction by a paraprofessional inside the general education classroom.

Id. at p. 13. The 2021 IEP noted that Student had “a 1on1 support in [the] general education classroom to support him with completing modified lessons and activities.” *Id.* at p. 12.

25. The paraprofessional support provided under the 2021 IEP was a significant reduction from the level of support Student received under his 2020 IEP. *See Exhibit L*, pp. 15-29. The 2020 IEP required 2,010 minutes per week of direct classroom instruction provided by a special education teacher. *Id.* at p. 25. The 2020 IEP specified that this support should extend to “academic times” and “non-academic routines (e.g., lunch, outside time), and extracurricular activities.” *Id.* at p. 24.

26. Under the 2021 IEP, Student spent at least 80% of his time in the general education environment. *Exhibit A*, p. 14. The 2021 IEP provided that, in this placement, Student “gain[ed] exposure to grade level concepts and learning objectives through support of modified projects and assignments . . . and the support of a 1on1 in general education setting with the exception of PE.” *Id.*

27. The 2021 IEP contained an embedded prior written notice (“PWN”), indicating that the IEP Team considered further reducing Student’s 1:1 support. *Id.* at p. 15. The IEP Team rejected this option because 1:1 instruction helped Student stay focused. *Id.*

28. Parent alleged the District did not provide her a copy of the 2021 IEP after it was finalized in February 2021. *Interview with Parents*. Instead, Parent asserted that she did not receive a copy of the 2021 IEP until November 2021. *Id.* The District conceded it did not provide Parent a copy of the IEP in Spanish; however, the District argued Parent was provided a copy of the 2021 IEP shortly after the IEP Team meeting. *Response*, p. 5. In support of this argument, the District relied on an email between Prior Case Manager and a District administrative assistant. *Id.* This email indicated only that Student’s 2021 IEP was ready to be finalized and in no way indicated whether a copy of the 2021 IEP was provided to Parent. The District also cited a Spanish translation of the IEP which was provided to Parent in November 2021. *Id.*; *Exhibit I*, pp. 22-23.

29. Nothing in the record evidences that a copy of the 2021 IEP was provided to Parent—either in English or in Spanish—before November 2021.

E. Beginning of 2021-2022 School Year

30. The 2021 IEP was in effect at the beginning of the 2021-2022 school year. *Interview with Case Manager*. Prior Case Manager left School at the end of the 2020-2021 school year, and current Case Manager was hired as her replacement. *Id.*

31. On August 17, Sister emailed District’s Coordinator of Special Education (“Coordinator”) to request a virtual meeting with Student’s new paraprofessional before the school year began. *Exhibit I*, p. 3. Coordinator identified Case Manager as Student’s new special education teacher and helped organize a meeting between Parents and Case Manager. *Id.* at p. 3-7. When asked about a paraprofessional for Student, Coordinator indicated one had not been hired yet, but assured Sister that District Lead Paraprofessional would support Student until a paraprofessional could be hired for School. *Id.*

32. Case Manager met with Parent in-person at School on August 23, the day before School started. *Id.* During the meeting, Parent shared information about Student’s needs, his likes, and how he does things to help Case Manager get to know Student. *Interview with Parents.* Sister provided interpretation for Parent. *Interviews with Parents and Sister.* Case Manager did not say anything that would have indicated to Parent that Student’s level of paraprofessional support had changed. *Id.* And, indeed, Case Manager was new to School and had no knowledge of the support Student received under his 2020 IEP. *Interview with Case Manager.*

33. Before the school year began, Case Manager provided a paper copy of the 2021 IEP to his teachers and service providers. *Id.* She also met—either via email or in-person—with Student’s general education teachers to talk about his IEP and modifying his curriculum. *Id.*

34. Case Manager’s understanding was that Student required 1:1 support in the academic environment but that he did not require 1:1 support in other settings (such as transitions, recess, etc.). *Id.* Nothing in the 2021 IEP indicated that Student needed paraprofessional support for safety. *Id.*

35. Based on her understanding, Case Manager provided Student support in all his general education classes, except P.E. *Id.* Student transitioned between classes independently. *Id.* Case Manager gave Student the option to eat lunch inside the special education classroom or outside. *Id.* Typically, Student chose to eat outside. *Id.* According to Case Manager, 95% of the time Case Manager and another student (“Other Student”) joined Student outside for lunch and recess, even though such support was not required by Student’s 2021 IEP. *Id.*

36. At the beginning of the year, four students at School required 1:1 paraprofessional support, but School only had two paraprofessionals. *Id.* As a result, Case Manager, who was hired as a special education teacher, provided paraprofessional support to Student and Other Student at the same time. *Id.* Because Student and Other Student had the same class schedule, Case Manager was able to serve both students at the same time. *Id.* Case Manager modified the general education curriculum to each student’s ability and provided the students with individualized support in the special education classroom. *Id.* Even though Student was not receiving 1:1 support from Case Manager, he continued to make progress on his annual goals. *Id.*

F. October 2021 Incident

37. On October 22, Student’s glasses were broken during lunch recess. *Interviews with Assistant Principal, Case Manager, and District Lead Paraprofessional.* Before the incident, Student ate lunch outside with Case Manager and Other Student. *Interview with Case Manager.* However, Case Manager experienced a health emergency and had to return to her classroom after lunch to prepare materials before leaving for the emergency room. *Id.* As a result, Student went to recess without Case Manager. *Id.* Assistant Principal and two other School staff

members were supervising the approximately 200 students during recess, including Student. *Interview with Assistant Principal.*

38. District Lead Paraprofessional and School Paraprofessional were supporting their students at recess. *Interview with District Lead Paraprofessional.* District Lead Paraprofessional was not aware that Student and Other Student were at recess without Case Manager. *Id.*

39. That day, Student walked laps on the track as he often did, greeting District Lead Paraprofessional and Assistant Principal as he passed by them. *Interviews with Assistant Principal and District Lead Paraprofessional.*

40. Near the end of recess, Student approached Assistant Principal and District Lead Paraprofessional separately to show them his broken glasses. *Id.* Both Assistant Principal and District Lead Paraprofessional questioned Student about what happened. *Id.* Ultimately, Student indicated a group of students pushed him and broke his glasses, though Student could not identify the students involved. *Id.*

41. When Student returned to the special education classroom, Case Manager also asked him what happened. *Interview with Case Manager.* Again, Student communicated that someone broke his glasses but could not provide any other details. *Id.* As Case Manager left for the emergency room, she texted Sister to let her know that another student broke Student's glasses at recess. *Id.*

42. Assistant Principal questioned several groups of students and visited the classes that were at recess that day. *Interview with Assistant Principal.* However, no one acknowledged knowing what happened. *Id.* Later, Security Officer and Assistant Principal reviewed video footage from recess. *Id.* Unfortunately, the cameras were too far away, so the footage did not show individual student activities, just groups of students on the field. *Id.*

43. Ultimately, Assistant Principal could not determine how Student's glasses were broken. *Id.* Executive Director of Student Support Services ("Executive Director") conducted an investigation into the incident but could not identify what happened or who was involved. *Id.*

44. No School staff members recalled any occasions in which Student had been bullied at School. *Interviews with Assistant Principal, Case Manager, and School Psychologist.* Parent, however, recalled an incident in September 2021 when Student alleged another student hit him. *Interview with Parents.*

45. Following the incident, Parents removed Student from School, expressing concern about his safety. *Id.* In December 2021, the District agreed to reevaluate Student in light of Parents' concerns about his safety and reconsider Student's services and placement. *Exhibit D*, pp. 1-2.

G. Changes to Student's 2021 IEP

46. Parent was surprised to learn that Case Manager was not with Student during the incident on October 22. *Interview with Parent*. At that point, Parent believed Student was still receiving 1:1 support throughout his school day, as he did under the 2020 IEP. *Id.* Because Parent did not understand the changes that were made during the January 2021 IEP Team meeting, Parent incorrectly assumed the District had amended Student's IEP without her consent. *Id.*

47. On December 6—when Parent filed her Complaint—Student's IEP Team had not met since the January 2021 IEP Team meeting. *Interview with Case Manager*. Additionally, the 2021 IEP had not been amended. *Id.* Instead, the 2021 IEP remained in effect, as originally written. *Id.*

H. District Policy on Translation and Interpretation

48. The District has a written policy ("Policy")—titled "Translation Services Policy"—that outlines the use of interpreters and translators in the District. *Exhibit M*, pp. 1-6. Under the Policy, District schools may "only use competent interpreters who are fluent in English and in the requested language. The school shall make sure interpreters understand any terms or concepts that will be used during the meeting." *Id.* at p. 1. Additionally, interpreters must be a "neutral third party" and "communicate everything said during the conversation." *Id.*

49. Per the Policy, "[s]chools may not rely on or ask students, siblings, or friends or untrained school staff to interpret for parents." *Id.* at p. 3.

50. The Policy specifies that the District will fund interpretation for IEP Team meetings, parent meetings, and parent/teacher conferences and translation of IEPs (among other documents). *Id.*

51. The Policy does not require parents to request an interpreter or a translation, although parents often make such requests. *Id.*; *Interview with Executive Director*. Instead, case managers should be aware of a family's preferred language from the District's annual registration process. *Interview with Executive Director*. Case managers should consult this information to ensure they communicate with the family in the appropriate language. *Id.*

52. In Fall 2021, the District also developed a Communications Matrix, detailing the various interpreter and translation services available to District staff. *Exhibit M*, p. 7.

53. The District's Special Education Procedural Manual neither incorporates nor references the Policy, though it does address use of interpreters for individuals who are deaf or hard of hearing. *See Exhibit H*, pp. 3-109. During her interview, Case Manager was not aware of the Policy. *Interview with Case Manager*. Because the SCO was unable to interview Prior Case Manager, the SCO could not determine whether Prior Case Manager knew about the Policy.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: Student's IEP was not amended during the relevant time period. As a result, no violation of 34 C.F.R. § 300.324(a)(6) occurred.

The first allegation accepted for investigation concerns whether the District amended Student's IEP without agreement from Parent and outside of an IEP Team meeting. In particular, Parent suggested that the District amended Student's IEP to reduce his paraprofessional support.

The IDEA allows an IEP to be amended two ways:

1. Changes to the IEP may be made by the entire IEP Team at an IEP Team meeting; or
2. If the parent and the school district agree not to convene an IEP Team meeting, the changes may be made in writing.

34 C.F.R. § 300.324(a)(4), (6).

Here, Parent mistakenly thought Student's IEP was amended during Fall 2021 to reduce Student's paraprofessional support. (FF #s 18, 46.) After Parent learned Student did not have paraprofessional support when his glasses were broken, Parent assumed the District changed Student's IEP without her consent. (FF # 46.) That change, however, was made during the January 2021 IEP Team meeting. (FF #s 24, 25.) Because the District failed to provide Parent with adequate interpretation at that IEP Team meeting, Parent was not aware of the changes made to Student's IEP until Fall 2021. (FF # 18, 46.)

At the time Parent filed her Complaint, Student's 2021 IEP had not been amended. (FF # 48.) Therefore, the SCO finds and concludes no violation of 34 C.F.R. § 300.324(a)(6) occurred.

Conclusion to Allegation No. 2: The District did not provide Parent a copy of Student's IEP, in violation of 34 C.F.R. § 300.322(f), and failed to provide PWN in Parent's native language, in violation of 34 C.F.R. § 300.503(c)(1)(ii). These violations resulted in a denial of FAPE.

The second allegation in this investigation concerns whether the District provided Parent a copy of Student's IEP. Specifically, in her Complaint, Parent alleged the District did not provide her a copy of Student's IEP that reduced his paraprofessional support.

The IDEA requires school districts to provide parents a copy of their child's IEP at no cost. 34 C.F.R. § 300.322(f). The IDEA does not specify that the IEP be provided within a certain timeframe. *See id.*

Under the IDEA, certain information must be provided in a parent’s native language. For example, 34 C.F.R. § 300.503(c)(1)(ii) mandates that PWN be in “the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.” However, the IDEA does not explicitly require an IEP to be translated. *Dear Colleague Letter*, 116 LRP 44552 (OSEP 6/14/16). That said, Title VI of the Civil Rights Act of 1964 (“Title VI”) does require an IEP to be provided in a parent’s native language.

[A]ll vital documents, including a student’s IEP, must be accessible to [Limited English Proficient] parents, but that does not necessarily mean that all vital documents must be translated for every language in the district. . . . A district, must, however, be prepared to provide timely and complete translated IEPs to provide meaningful access to the IEP and the parental rights that attach to it. This is because a parent needs meaningful access to the IEP not just during the IEP meeting, but also across school years to monitor the child’s progress and ensure that IEP services are provided.

Id.

Here, nothing in the record evidenced that the District ever provided Parent a copy of the 2021 IEP (or the included PWN)—in English or in Spanish—until November 2021. (FF #s 28, 29.) The documents cited in the District’s Response do not indicate whether Parent received a copy of the IEP after the IEP Team meeting in January 2021. (*Id.*)

For this reason, the SCO finds and concludes that the District failed to provide Parent a copy of the 2021 IEP, resulting in a procedural violation of 34 C.F.R. § 300.322(f). Though the District also failed to provide Parent a copy of the IEP in her native language, the SCO does not have authority to enforce provisions of Title VI.

Because the 2021 IEP contained an embedded PWN (FF # 27), the District was obligated to provide the PWN to Parent in her native language. The District’s failure to translate the IEP—or, at least, the PWN itself—caused a procedural violation of 34 C.F.R. § 300.503(c)(1)(ii).

A procedural violation causes a denial of FAPE where it “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

Here, the SCO finds and concludes that the District’s failure significantly impeded Parent’s opportunity to participate in the decision-making process regarding Student’s FAPE. Without an interpreter, Parent did not understand all of the changes made to Student’s IEP during the January 2021 IEP Team meeting. (FF # 18.) This lack of understanding was compounded by the District’s failure to provide Parent a copy of the IEP in *any* language but, especially in Spanish.

Even though the IEP Team meeting was in January 2021, Parent did not receive a copy of the IEP until November 2021. (FF # 28.) This failure spanned ten months over two separate school years. For these reasons, the SCO finds and concludes that the procedural violations resulted in a denial of FAPE.

However, the SCO must consider steps the District has already taken to remedy this violation. In November, the District provided Parent a copy of the IEP in Spanish. (FF # 28.) And, in December, the District agreed to reevaluate Student and hold an IEP Team meeting to discuss Student's services and placement. (FF # 45.) Assuming the District provides Parent a proper interpreter for this meeting, Parent will have the opportunity to participate in the decision-making process. The SCO recognizes that this remedial action by the District does not completely resolve the harm caused by the District's violation, but it is as close as is possible. For these reasons, the SCO has not awarded an additional remedy for this violation.

Systemic IDEA Violation

Pursuant to its general supervisory authority, 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 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).

The evidence in the record does not indicate that the District's violation resulted from improper procedure or a lack of knowledge by District or School staff. Instead, this violation appeared to result from Prior Case Manager's failure to follow District procedure or practice. For this reason, the SCO finds and concludes that the violation is not systemic.

Conclusion to Allegation No. 3: The District failed to properly implement Student's IEP from August 24, 2021 to October 22, 2021, in violation of 34 C.F.R. § 300.323. This violation did not result in a denial of FAPE.

The third allegation accepted for investigation relates to the implementation of Student's IEP during the 2021-2022 school year. Specifically, Parent alleged the District failed to provide Student with the paraprofessional support required by his 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, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *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). Here, the findings demonstrate that Case Manager, Student’s teachers, and Student’s service providers were aware of their responsibilities under Student’s 2021 IEP. (FF # 33.) Case Manager provided paper copies of Student’s IEP to his general education teachers and service providers before the beginning of the school year. (*Id.*) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

B. Implementation of Student’s IEP

Parent has alleged the District failed to properly implement Student’s IEP by failing to provide him with the paraprofessional support required by his IEP.

The language in Student’s IEP required the District to provide Student with 1:1 support from a paraprofessional in the general education classroom. (FF #s 24, 34.) The District was not required to provide Student paraprofessional support outside the classroom, such as during transitions, at lunch, or at recess. (*See id.*) As the Findings of Fact evidence, Case Manager was providing Student with paraprofessional support in the general education classroom, consistent with his IEP. (FF # 34.)

However, even though the District provided Student with paraprofessional support at appropriate times during his school day, the District conceded that it did not provide Student with 1:1 support due to a shortage of paraprofessionals. (FF # 36.) Case Manager provided support to Student and Other Student simultaneously, inconsistent with Student’s IEP. (*Id.*) This was a failure to implement Student’s IEP and resulted in a violation of 34 C.F.R. § 300.323.

Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP’s requirements

results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App'x 202, 205 (2d Cir. 2010).

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

Here, the District's failure to implement Student's IEP did not result in material violation of the IDEA. The District's violation occurred over a short period of time during the Fall 2021 semester. (FF #s 35, 45.) Because Student and Other Student had the same class schedule, Case Manager was able to adequately support both students simultaneously, while still modifying the curriculum for each student's individual needs. (FF # 35.) Student continued to make progress on his annual goals despite the change in his support. (*Id.*) For these reasons, the SCO finds and concludes that the District's failure to implement Student's 2021 IEP was immaterial.

Systemic IDEA Violation

As noted above, 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).

Here, the evidence in the record does not indicate that the District's violation resulted from improper procedure or a lack of knowledge by District or School staff. Instead, this violation is the result of inadequate paraprofessional staffing. (FF # 35.) For these reasons, the SCO finds and concludes that the violation is not systemic.

Conclusion to Allegation No. 4: The District failed to provide an interpreter for the January 2021 IEP Team meeting, in violation of 34 C.F.R. § 300.322(e). This violation resulted in a denial of FAPE.

The fourth allegation accepted for investigation relates to the District's provision of interpreters at IEP Team meetings.

The IDEA specifies that school districts must "take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English." 34 C.F.R. § 300.322(e).

Here, the evidence in the record indicates that the District failed to provide Parent with an interpreter for the January 2021 IEP Team meeting. (FF #s 11-18.) In Parents' recollection, School Psychologist offered to explain anything Parents did not understand but did not actually provide consecutive interpretation. (FF # 15.) And School Psychologist could not remember whether he served as an interpreter at the IEP Team meeting. (FF # 14.) Even assuming School Psychologist provided *some* interpretation at the IEP Team meeting, such limited interpretation would be inadequate to allow Parents to fully participate in the meeting. And School Psychologist conceded he struggled to interpret special education terminology during IEP Team meetings. (FF # 13.)

The SCO finds and concludes that the District did not take the action necessary to ensure Parent understood the proceedings of the January 2021 IEP Team meeting. The District's failure to provide Parent an interpreter resulted in a procedural violation of 34 C.F.R. § 300.322(e).

As discussed above, a procedural violation causes a denial of FAPE where it "(1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (3) caused a deprivation of educational benefit." 34 C.F.R. § 300.513(a)(2).

The District's failure to provide Parent an interpreter for the IEP Team meeting significantly impeded Parent's opportunity to participate in the decisions made at that meeting regarding Student's FAPE. Indeed, without an interpreter, Parent did not understand that Student's support was being reduced under the 2021 IEP. (FF # 18.) This procedural violation, therefore, caused a denial of FAPE.

No remedy can undo the District's violation or recreate a meeting that occurred one year ago. However, the SCO has crafted a remedy that is designed to reduce recurrence of this violation. Specifically, the SCO has ordered the District to provide Parent a professional interpreter at the next IEP Team meeting. Additionally, the District will be required to provide a copy of the Policy to all School special education staff and service providers, and the SCO has directed the District to revise its Special Education Procedural Manual to incorporate or, at least, reference the

Policy. This will help the District’s special education staff remember the Policy and ensure parents receive necessary interpretation and translation services.

Systemic IDEA Violation

As noted above, 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).

Here, the District’s Policy outlines the use of interpreters in the District, including at IEP Team meetings. (FF #s 48-52.) The evidence in the record suggests School’s special education staff—including Prior Case Manager and Case Manager—might not have been aware of the Policy. This lack of knowledge by specific staff members likely resulted in the violation, rather than a lack of procedure or knowledge District-wide. For these reasons, the SCO finds and concludes that the violation is not systemic.

REMEDIES

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

1. Failing to provide Parent a copy of Student’s IEP, in violation of 34 C.F.R. § 300.322(f);
2. Failing to provide PWN in Parent’s native language, in violation of 34 C.F.R. § 300.503(c)(1)(ii);
3. Failing to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323; and
4. Failing to provide Parent an interpreter for an IEP Team meeting, in violation of 34 C.F.R. § 300.322(e).

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

1. By **Friday, March 4, 2022**, the District shall submit to 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 CAP must, at a minimum, provide for the following:
 - a. All School special education staff members and service providers must review this Decision and the District’s Policy and Communications Matrix. This review must occur no later than **Friday, April 1, 2022**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, April 8, 2022**.

- b. The District must convene Student’s IEP Team, at a mutually agreeable date and time, to discuss Student’s services and placement. This meeting must occur no later than **Friday, February 25, 2022**. The District must provide a professional interpreter for the meeting. Additionally, the District must give Parent a copy of the result of Student’s current reevaluation and any draft IEP in Spanish no later than **Tuesday, February 22, 2022**. A signed assurance that the District complied with the requirements of this paragraph must be completed and provided to CDE no later than **Friday, March 4, 2022**.
- i. To evidence that the IEP Team met and considered Student’s reevaluation, the District must submit a copy of Student’s final IEP—in English and in Spanish—to CDE no later than **Friday, March 18, 2022**.
- c. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. District Policies and Procedures

- a. The District must revise the Special Education Procedural Manual to incorporate or, at a minimum, reference the District’s Policy and Communications Matrix. The District must make these revisions and submit them to CDE for approval by **Friday, April 1, 2022**.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Rebecca O’Malley
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 CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**


CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has

the right to file a Due Process Complaint on the issue with which the party disagrees. See 34 C.F.R. § 300.507(a) and *Analysis of Comments and Changes to the 2006 Part B Regulations*, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 4th day of February, 2022.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-8

Response, pages 1-7

- Exhibit A: 2021 IEP
- Exhibit B: None
- Exhibit C: None
- Exhibit D: Prior Written Notice
- Exhibit E: Grade and Attendance Reports
- Exhibit F: Investigation Report from 10/22/21 Incident
- Exhibit G: Progress Reports
- Exhibit H: District Policies
- Exhibit I: Email Correspondence
- Exhibit J: List of Staff
- Exhibit K: None
- Exhibit L: Reevaluation and 2020 IEP
- Exhibit M: Policy and Communications Matrix

Reply, pages 1-5

Telephonic Interviews with:

- Assistant Principal: January 20, 2022
- School Psychologist: January 20, 2022
- Case Manager: January 20, 2022
- District Lead Paraprofessional: January 20, 2022
- Executive Director of Student Support Services: January 20, 2022
- Parents: January 20, 2022
- Sister: January 20, 2022