

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

State-Level Complaint 2023:539
St. Vrain Valley School District RE-1J

DECISION

INTRODUCTION

On April 24, 2023, 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 St. Vrain Valley School District RE-1J (“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

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from April 24, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

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, between August 2022 and present, specifically by failing to provide Student the paraprofessional support required by his IEP, in violation of 34 C.F.R. § 300.323.

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. During the 2022-2023 school year, Student was in tenth grade at a District high school ("School"). *Interview with Parent.*
2. Student qualifies for special education and related services under the disability categories of Intellectual Disability, Orthopedic Impairment, and Other Health Impairment. *Exhibit A, p. 1.*
3. Student is a charming, fun-loving young man who enjoys laughing and making others laugh. *Interviews with Case Manager, Paraprofessional #1, and Parent.* He communicates with others by using vocalizations, responding to yes/no questions with sign language, and employing a touch-to-chat application on an iPad. *Interviews with Case Manager and Parent.*

B. Student's IEP and Health Care Plan

4. Student's IEP dated September 12, 2022 ("IEP") was in effect for a majority of the 2022-2023 school year. *Exhibit A, pp. 1-24.*
5. The IEP reviewed Student's present levels of performance, noting that his cognitive abilities were significantly delayed compared to same-age peers. *Id.* at pp. 4-5. Student answered simple comprehension questions with a yes or no answer and could count to five. *Id.* He met one of his prior annual IEP goals. *Id.* at pp. 5-9.
6. The IEP noted that, due to Student's disabilities, he required adult assistance to push his wheelchair, navigate the building, assist with his G-tube feedings, change diapers, and get on and off the bus. *Id.* at p. 12. Student's cognitive challenges, fine motor skills, and communication difficulties affected his ability to access the general education curriculum. *Id.*
7. The IEP specified that Student required a Health Care Plan. *Id.* at p. 15.
8. The IEP contained a post-secondary transition plan to help Student work towards his goal of better communicating his wants and needs and working in the home, such as by helping do the laundry. *Id.* at pp. 14-15.
9. The four annual goals in the IEP targeted physical motor skills, mathematics, independent living skills, and communication skills. *Id.* at pp. 17-18.

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

10. The IEP included more than a dozen accommodations, such as assistance of an adult for mobility, assistance of two adults for all transfers, preferential seating near adults, and multiple opportunities for breaks. *Id.* at p. 20. Additionally, the IEP made clear that the curriculum would be modified due to Student’s intellectual disability. *Id.*

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

- Specialized Instruction:
 - 5,400 minutes per month of direct specialized instruction provided by a special education teacher outside the general education classroom; and
 - 1,800 minutes per month of indirect specialized instruction provided by a special education teacher inside the general education classroom.
- Physical Therapy:
 - 120 minutes per month of direct physical therapy provided by a physical therapist outside the general education classroom.
- Occupational Therapy:
 - 90 minutes per month of direct occupational therapy provided by an occupational therapist outside the general education classroom.
- Speech/Language Services:
 - 90 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education classroom.

Id. at pp. 23-24.

12. Per the IEP, Student spent less than 40% of his time in the general education classroom. *Id.* at p. 24. The IEP contained an embedded prior written notice (“PWN”) indicating that the IEP Team had considered increasing Student’s time in the general education environment; however, the IEP Team rejected that option because Student “require[d] specialized instruction in core content areas in order to be successful in school at [that] time.” *Id.* at p. 25.

13. Student’s Health Plan, dated August 2022, indicated that:

- Student had a wheelchair and required help with mobility.
- Student required “diapering every 2 hours and as needed.”

- Student had a feeding tube. Staff needed to connect the bag and run it until empty.

Exhibit B, pp. 5-6. Additionally, Student had an asthma care plan and a seizure care plan. *Id.* at pp. 2-3, 15.

C. Student's School Day

14. Prior to the start of the 2022-2023 school year, Case Manager provided a snapshot of Student's IEP and his health-related plans to paraprofessionals and went over the documents with them. *Id.* Copies of the documents were also kept in a notebook in the SSN classroom. *Id.* Case Manager similarly provided electronic copies of the documents to other relevant School staff. *Id.*
15. During the school year, Student was in School's SSN classroom with anywhere from seven to 14 other students. *Interview with Case Manager.* Case Manager and two paraprofessionals (collectively, "Paraprofessionals") staffed the SSN classroom. *Id.* Paraprofessionals accompanied Student to his specials and lunch. *Interview with Paraprofessional #1.* Paraprofessionals were assisting Student, as well as a group of 3-9 students from the SSN classroom. *Id.*
16. On a typical day, Student arrived at School around 7:30 a.m. on the bus. *Interviews with Case Manager, Paraprofessional #1, and Parent.* Either Paraprofessional #1 or Paraprofessional #2 would help Student off the bus and into School. *Interviews with Case Manager and Paraprofessional #1.*

D. Student's Diapering Needs

17. Paraprofessionals handled Student's diapering needs. *Interviews with Case Manager and Paraprofessional #1.* They used a private bathroom with a soft bed that was stocked with diapers and wipes for him. *Interview with Paraprofessional #1.* Paraprofessional #1 unhooked Student's feeding tube before Paraprofessionals worked together to lift Student from his wheelchair onto the table. *Id.* Paraprofessional #2 then changed Student's diaper. *Id.* If Student's clothes were wet, staff changed him into clean clothes that had been provided by Parent. *Id.* Staff had access to a washer and dryer and were able to launder any soiled clothes. *Id.* Before leaving the room, Paraprofessional #1 would reconnect Student's feeding tube. *Id.*
18. Paraprofessionals maintained a log on a clipboard in the bathroom to document when they changed Student's diaper and whether he was soiled. *Id.* Paraprofessionals completed the log before returning to class. *Id.* The logs for the 2022-2023 school year were produced during this investigation. *Exhibit B*, pp. 21-30.
19. During Fall 2022, Paraprofessionals changed Student's diaper three times per school day, typically around 9:15/9:30 a.m., 12:30 p.m., and 2:00 p.m. *See id.* at pp. 24-26, 28-30. This

schedule continued until mid-April 2023, when Parent expressed concern about Student coming home soaking wet. *Id.* at pp. 22, 23, 26; *Interviews with Paraprofessional #1 and Parent*. In response to Parent's concern, Paraprofessionals started changing Student at 8:00 a.m., 10:00 a.m., 12:00 p.m., and 2:00 p.m. *Exhibit B*, pp. 21, 23; *Interviews with Case Manager and Paraprofessional #1*.

E. Student's Feeding Needs

20. As soon as Student arrived at School, Paraprofessional #1 would begin Student's feeding by connecting the prepared bag to Student's G-tube. *Interview with Paraprofessional #1*. Staff were directed to let the feeding run until it was completed except when Student was being moved. *Id.*; *Interview with Parent*. It was necessary to disconnect the feeding tube anytime Student was moved from his wheelchair to ensure his G-tube was not damaged. *Interviews with Paraprofessional #1 and Parent*.
21. Paraprofessionals logged the start and end time for Student's feedings in a log. *Exhibit B*, pp. 32-38. The logs reflect some challenges with Student's feedings during Fall 2022, including dead batteries on the pump and the bag not draining. *Id.* at pp. 36-37. District staff usually noted that they had contacted Parent regarding the situation. *Id.* In all, the logs show that Paraprofessionals started Student's feedings in the morning and let them run until 2:30 p.m. *Id.* at pp. 32-38.
22. On February 7, Parent and one of Student's siblings met with Paraprofessionals to provide refresher training on Student's feeding needs. *Interview with Parent*; *Exhibit B*, p. 35.
23. In her Complaint, Parent expressed concern about Student's feedings not being completed when he came home from School. *Complaint*, p. 7. Parent suspected this was due to staff starting the feeding late or forgetting to turn it back on after Student was moved. *Interview with Parent*.
24. The logs indicate that staff did not always document when Student's feeding pump was turned off/on due to diaper changes. *Exhibit B*, pp. 32-38. As a result, it is impossible to determine from the logs alone whether Paraprofessionals always remembered to turn Student's feeding back on after he was repositioned in his wheelchair. *See id.*

F. Paraprofessional Support

25. On January 9, 2023, Student was involved in an accident during P.E. class. *Interview with Parent*; *Response*, p. 4. Per the District, Student's wheelchair was knocked over when a parachute accidentally became entangled in the wheelchair footrest. *Response*, p. 4. Parent was informed that, though Paraprofessional #2 was in P.E. with Student, she was helping another student at the time of the accident. *Interview with Parent*.

26. The accident broke the headrest on Student's wheelchair and caused Student to experience seizures and a concussion. *Id.* He missed nearly one month of School while recovering. *Id.*
27. Following the accident, Parent requested the District provide Student with one-to-one paraprofessional support. *Interviews with Case Manager and Parent.* The District convened Student's IEP Team on January 31, 2023, in response to Parent's request. *Response*, p. 4. During the meeting, the District agreed to provide additional adult support in PE. *Id.* Previously, the P.E. class had been staffed by two teachers and Paraprofessional #2; now, Paraprofessional #1 would also attend P.E. class with Student. *Id.*; *Interview with Paraprofessional #1.*

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 fully implement Student's IEP between August 2022 and April 2023, in violation of 34 C.F.R. § 300.323(c). No denial of FAPE occurred.

Parent's concern is that the District failed to properly implement Student's IEP, specifically by failing to provide Student necessary paraprofessional support and by not meeting Student's diapering and feeding needs. Parent has not challenged the District's provision of specialized instruction and related services.

A. Legal Requirements for IEP Implementation

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.* § 300.323(c)(2). 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).

B. Accessibility of Student's IEP to Teachers

The SCO first determines whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the Findings of Fact demonstrate that Case Manager provided a snapshot of Student's IEP and copies of his health-related plans to Paraprofessionals (and other School staff as necessary) and met with Paraprofessionals to discuss their contents. (FF # 14.) Additionally, copies were kept in a notebook in the SSN classroom for reference as needed. (*Id.*) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d), by ensuring the appropriate staff were informed of their responsibilities in implementing Student's IEP.

C. Paraprofessional Support

Student's IEP noted that he required adult assistance to push his wheelchair and navigate the school building. (FF #s 6, 10.) Additionally, Student needed an adult to monitor his health needs, including his G-tube feedings and diaper changes. (*Id.*) The accommodations in his IEP indicated he would have assistance from adults for mobility and transfers to and from his wheelchair. (FF # 10.) His IEP did not require any specified level of paraprofessional support beyond these needs or activities. (FF #s 4-12.) Indeed, his service delivery statement did not specify that he would receive any specialized instruction or services from a paraprofessional. (FF # 11.)

The Record does not demonstrate that the District failed to provide Student with the paraprofessional support required by his IEP during the 2022-2023 school year. When Student was injured in P.E. class, Paraprofessional #2 was in class to support Student, albeit focused on another situation. (FF # 25.) Perhaps if Paraprofessional #2 had been standing next to Student, she could have prevented the accident. Student undoubtedly sustained serious injuries that day; however, not every error by a staff member amounts to an implementation violation. The Record reflects that the District provided adult assistance for Student's health and mobility needs, as required by the IEP. For these reasons, the SCO finds and concludes that the District provided paraprofessional support to Student in accordance with his IEP.

D. Health-Related Support

Student's health plan outlined the steps staff needed to take regarding Student's diapering and feeding needs. (FF # 13.) His IEP specified that Student had an individual health plan and incorporated the key components of the health plan into his IEP. (FF #s 6, 10.) Specifically, the IEP noted that Student needed diapering every two hours and adult assistance to start and stop his G-tube feedings. (*Id.*) As a result, the District was required to provide Student with these health services to fully implement his IEP.

Under the IEP and health plan, School staff were responsible for initiating Student's feedings upon his arrival at School and letting the feeding run until completed. (FF #s 6, 10, 13.) Staff

needed to disconnect his G-tube when he was transferred in and out of his wheelchair and then restart his feedings. (*Id.*) Parent expressed concerns about the District’s compliance with these provisions. (FF # 23.) Staff logged when Student’s feedings were started and completed but did not typically indicate when his feedings were paused. (FF #s 21, 24.) On certain occasions, District staff contacted Parent about issues with the feeding pump, and together they worked through those issues. (FF # 21.) Parent has not identified any other specific days when the feedings were incomplete. (FF # 23.) Though the SCO does not doubt that Student, at times, came home with incomplete feedings, the Record reflects District’s staff’s overall compliance with the feeding procedures. (FF # 21.)

The IEP also specified that staff were to change Student’s diaper every two hours. (FF #s 6, 10, 13.) From August 2022 to April 2023, the District consistently failed to change Student’s diaper in accordance with his IEP. (FF # 19.) Staff typically changed his diapers at 9:15/9:30 a.m., 12:30 p.m., and 2:00 p.m. (*Id.*) This schedule allowed three hours to pass between his morning and lunch diaper changes. (*Id.*) Therefore, the SCO finds and concludes that the District failed to comply with the diapering provisions of Student’s IEP, in violation of 34 C.F.R. § 300.323.

E. 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 change Student’s diaper every two hours as required by his IEP. Though an hour and a half passed between some of Student’s diaper changes, three hours elapsed between his 9:30 a.m. diaper change and his 12:30 p.m. diaper change. (FF # 19.) This error by the District did not constitute a material failure and, instead, was a minor discrepancy between what was promised and what was provided. After Parent expressed concern, the District adhered to Student’s diapering schedule. (*Id.*) There is no indication the District’s failure impacted

Student’s educational progress. For this reason, the SCO finds and concludes that the District’s failure to implement did not result in a denial of FAPE.

F. Systemic Nature of Violation

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 SCO finds nothing in the Record to suggest that the District’s failure to implement Student’s IEP was systemic. The District changed Student’s diapers with regularity, as evidenced by consistent service logs, just not at the specific interval Student needed (and required by his IEP). The SCO has no reason to believe that this failure extends beyond Student or School.

REMEDIES

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

- a. Failure to fully implement Student’s IEP, in violation of 34 C.F.R. § 300.323(c).

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

1. Corrective Action Plan

- a. By **Friday, July 21, 2023**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation 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, Assistant Director of Special Education, Principal, District School Nurse Consultant, Case Manager, Paraprofessional #1, Paraprofessional #2, and any other School staff working directly with Student must review this Decision, as well as the requirements of 34 C.F.R. § 300.323. This

review must occur no later than **Friday, August 18, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, August 25, 2023**.

3. Other Remedies

- a. Based on the outcomes of the other remedies, the CDE may require additional training, technical assistance, or revision of policy, procedure, or practice to address identified areas of concern. The CDE may also request additional records to ensure identified concerns have been addressed.
- b. Any additional findings of noncompliance identified through these remedies must be corrected consistent with 34 C.F.R. § 300.600(e).

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 June, 2023.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-12

Response, pages 1-11

- Exhibit A: IEPs
- Exhibit B: Health Documentation
- Exhibit C: Paraprofessional Schedule
- Exhibit D: Progress Monitoring
- Exhibit E: PWNs
- Exhibit F: Notices of Meeting
- Exhibit G: Policies and Procedures
- Exhibit H: Correspondence
- Exhibit I: Blank
- Exhibit J: Verification of Delivery to Parent
- Exhibit K: Additional Information

Telephone Interviews

- Assistant Director of Special Education: June 9, 2023
- Case Manager: June 13, 2023
- Paraprofessional #1: June 13, 2023
- Parent: June 13, 2023