

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

State Complaint SC2025-537
Denver Public Schools

DECISION

INTRODUCTION

On April 1, 2025, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after April 1, 2024. Information prior to April 1, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

1. The District did not fully implement Student’s Individualized Education Program (“IEP”) from August 2024 to present, because it:

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 The CDE’s state complaint investigation determines if the District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

- a. Did not provide Student with the supplementary aids and services, specifically one-on-one testing in a quiet environment in her literacy class, listed in her IEP, as required by 34 C.F.R. § 300.323(c)

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. During the 2024-2025 school year, Student attended second grade at a District elementary school (“School”). *Interview with Parent*. Student has two general education teachers: one for math and science instruction (“Math Teacher”) and one for literacy and social studies (“Literacy Teacher”). *Interviews with Literacy Teacher and Paraprofessional*.
2. Student qualifies for special education and related services under the disability categories of Autism Spectrum Disorders and Specific Learning Disability. *Exhibit A*, pp. 24.
3. Student is an intelligent, spunky young girl who loves socializing with her peers. *Interviews with Paraprofessional, Parent, Literacy Teacher, and Special Education Teacher*. She loves all forms of art and creative activities, whether it be drawing, theater, or dancing. *Id.* School staff described Student as a “joy to be around.” *Interviews with Special Education Teacher and Literacy Teacher*. Academically, literacy poses the greatest challenge for Student, though, at times, she has difficulty focusing and lacks motivation to complete her work. *Interviews with Literacy Teacher and Paraprofessional*.

B. Student’s 2024 IEP

4. At the beginning of the 2024-2025 school year, Student’s IEP dated February 23, 2024 (“2024 IEP”) was in effect. *Exhibit A*, pp. 2-23.
5. The 2024 IEP reviewed Student’s present levels of performance, noting that math and reading comprehension were areas of strength while spelling and fluency were areas for improvement. *Id.* at pp. 4-5. When regulated, Student actively participates in the general education setting. *Id.* However, when Student is dysregulated, she engages in atypical and disruptive behaviors and requires 1:1 adult support to regulate. *Id.*
6. As noted in the 2024 IEP, Student’s disabilities impacted her ability to self-regulate, her understanding of word structure and word families, her reading fluency, and her use of

³ The appendix, attached and incorporated by reference, details the entire Record.

appropriate grammar and spelling. *Id.* at p. 8. Student's needs warranted dedicated 1:1 adult support throughout her school day. *Id.* at pp. 8-9.

7. The 2024 IEP contained four annual goals in the areas of self-determination, social/emotional wellness, reading, and writing. *Id.* at pp. 12-15.
8. The 2024 IEP included nearly twenty accommodations designed to support Student's disabilities, including, in part:
 - Use of a visual schedule and visual timer;
 - Preferential seating near the instructional center of the classroom;
 - Access to movement breaks;
 - Use of vocabulary bank for written work; and
 - "Access to 1:1 paraprofessional support (also provided during testing)."

Id. at p. 14. No accommodation or other provision in the 2024 IEP identified a location for Student's testing. *Id.* at pp. 2-23.

9. The 2024 IEP required Student to receive the following specialized instruction and related services:
 - a. Specialized Instruction:
 - i. 150 minutes per week of direct literacy instruction provided by a special education teacher outside the general education classroom.
 - ii. 15 minutes per week of indirect literacy instruction provided by Special Education Teacher outside the general education classroom to allow Special Education Teacher to accommodate or modify Student's assignments in conjunction with her general education teacher(s).
 - b. Psychological Services:
 - i. 100 minutes per month of direct psychological services provided by a school psychologist outside the general education classroom to target Student's social/emotional and self-regulation skills.
 - ii. 120 minutes per year of indirect psychological services provided by a school psychologist outside the general education classroom to assist Student's team in implementing her behavior intervention plan.

- c. Occupational Therapy: 120 minutes per year of indirect occupational therapy services provided by an occupational therapist outside the general education classroom to support strategies and materials related to Student's self-regulation needs.

Id. at pp. 19-20. The 2024 IEP also specified that Student would receive 1:1 adult support from a paraprofessional throughout the school day. *Id.* Though the IEP contained a detailed description of what that support would look like during various portions of the school day, it did not describe the support Student would receive during testing. *Id.*

10. Under the IEP, Student spent more than 80% of her day in the general education classroom. *Id.* at p. 20.

C. Implementation of the 2024 IEP

11. Parent's Complaint asserts that Student did not complete tests with 1:1 support in a quiet environment as required by her IEP during the 2024-2025 school year. *Complaint*, p. 2. This noncompliance allegedly occurred in Student's literacy class. *Id.*
12. At the beginning of the school year, Special Education Teacher—who served as Student's case manager—distributed a snapshot of Student's IEP to each of her teachers. *Interview with Special Education Teacher*. Special Education Teacher highlighted Student's accommodations and asked if she could help implement the accommodation. *Id.* Later, Special Education Teacher followed up with staff to ensure they felt comfortable with Student's accommodations. *Id.*
13. Literacy Teacher recalled receiving a copy of the 2024 IEP and understood the requirements of Student's IEP. *Interview with Literacy Teacher*.
14. Paraprofessional also provided Student's dedicated adult support during the 2023-2024 school year. *Interview with Paraprofessional*. That school year, Student's teacher allowed Paraprofessional to administer Student's tests outside of the classroom. *Id.* Paraprofessional assumed this practice would continue during second grade. *Id.*
15. However, the plain language of the accommodation in the 2024 IEP required only that Student receive 1:1 support during testing. *Interviews with Literacy Teacher, Paraprofessional, and Special Education Teacher; Exhibit A*, p. 14. Neither the accommodations nor other provisions in the 2024 IEP specified a location for Student's testing. *Interviews with Literacy Teacher, Paraprofessional, and Special Education Teacher; Exhibit A*, pp. 2-23.
16. Based on the language in the 2024 IEP, Literacy Teacher required Student to take tests—such as spelling tests—in the classroom with Paraprofessional's support. *Interviews with Literacy Teacher and Paraprofessional*. Math Teacher allowed Student to complete tests with Paraprofessional in the conference room or the speech therapy room. *Interview with*

Paraprofessional. The District acknowledges this difference of interpretation in its Response. Response, p. 3.

17. Neither Paraprofessional nor Literacy Teacher could identify an instance in which Student had no access to adult support during testing. *Id.*
18. Though Paraprofessional provided Student's dedicated adult support for most of the school day, there were times that other paraprofessionals supported Student. *Interviews with Literacy Teacher and Paraprofessional*. For example, Paraprofessional spent 20-30 minutes each day in the preschool classroom. *Interview with Paraprofessional*. That period overlapped, in part, with Student's time in the literacy classroom. *Id.* According to Literacy Teacher, if Student completed a test while Paraprofessional was not in the classroom, she would have been assisted by another paraprofessional or staff member (such as Special Education Teacher). *Interview with Literacy Teacher*.
19. One such instance occurred on February 21, 2025. *Id.* That day, Student completed a spelling test in the literacy classroom with the assistance of a different paraprofessional ("Other Paraprofessional"). *Interviews with Literacy Teacher and Paraprofessional*. This test occurred while Paraprofessional was attending Student's IEP Team meeting discussed below. *Id.* Paraprofessional believed Student should only complete testing with her, not any other paraprofessionals. *Id.*
20. On March 3, 2025, Senior Team Lead, Special Education Teacher, Literacy Teacher, and Paraprofessional met to discuss the incident on February 21, 2025 and ensure all attendees were aligned on implementation of Student's accommodations. *Interviews with Literacy Teacher and Paraprofessional*.

D. Student's 2025 IEP

21. Prior to Student's annual IEP review, School staff held a planning meeting, which included Advocate, Parent, Principal, and Special Education Teacher. *Interview with Parent*. Amongst other topics, the attendees discussed revising Student's testing accommodation to "strengthen it" to ensure it could be "implemented with fidelity." *Interview with Parent*. Parent recalled the testing accommodation being an "emphasis" of the meeting. *Id.*
22. The District convened Student's IEP Team on February 21, 2025. *Exhibit E*, p. 1; *Interview with Special Education Teacher*. Literacy Teacher attended only a portion of the meeting, because she had to leave early to pick up her students from a specials class. *Interviews with Literacy Teacher, Paraprofessional, Parent, and Special Education Teacher*. No one could specifically recall which portions of the meeting Literacy Teacher did and did not attend. *Id.*
23. During the meeting, the IEP Team revisited the discussion regarding Student's testing accommodation. *Id.* Ultimately, the IEP Team agreed to reword the accommodation to

provide clarity on Student's access to support during testing and the location of testing. *Interview with Special Education Teacher.*

24. This IEP Team meeting resulted in an IEP dated February 21, 2025 ("2025 IEP"). *Exhibit A*, pp. 24-40. As revised, the accommodation in the 2025 IEP read: "Access to Dedicated Adult Support during testing (literacy and math) in a 1:1 quiet environment." *Id.* at p. 34. Similar language was also included in the IEP's service delivery statement. *Id.* at p. 37.
25. Following the meeting, Special Education Teacher sent a copy of the IEP to Parent for her review. *Interview with Special Education Teacher.* Special Education Teacher finalized the 2025 IEP on March 6, 2025, after Parent approved the draft. *Id.*
26. On March 14, 2025, the IEP Team amended Student's IEP to revise the accommodation to state: "All testing (in all content areas) administered by dedicated adult support in the special education room (1:1 quiet environment)." *Exhibit A*, p. 51. This amendment made clear that Student needed the accommodation for *all* testing, not just math and spelling. *Id.*; *Interview with Special Education Teacher.*
27. On March 17, 2025, Special Education Teacher emailed the amended 2025 IEP to Literacy Teacher. *Exhibit L*, p. 1.

E. Implementation of the 2025 IEP

28. On March 17, Literacy Teacher and Paraprofessional had a disagreement over implementation of Student's testing accommodation. *Interviews with Literacy Teacher and Paraprofessional.* When Literacy Teacher had students start preparing for a test, Paraprofessional asked Literacy Teacher for the materials so she could administer the test to Student outside the classroom. *Exhibit C*, pp. 1-2. Paraprofessional reminded Literacy Teacher of the accommodation in Student's IEP. *Id.*
29. Paraprofessional and Literacy Teacher then argued over Student's needs and the requirements of her IEP. *Id.*; *Interviews with Literacy Teacher and Paraprofessional.* Ultimately, Student completed the test in the classroom with Paraprofessional's support. *Interviews with Literacy Teacher and Paraprofessional.* The District acknowledged this disagreement in its Response. *Response*, p. 3.
30. Later that day, Paraprofessional emailed Parent to inform her of the disagreement with Literacy Teacher. *Exhibit C*, pp. 1-2. Parent subsequently filed this Complaint. *Interview with Parent.*
31. Since the Complaint was filed, Literacy Teacher has allowed Student to complete testing with Paraprofessional in a quiet space outside of the classroom. *Interviews with Paraprofessional and Special Education Teacher.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not fully implement Student's IEP, as required by 34 C.F.R. § 300.323(c). The noncompliance did not result in a denial of FAPE.

The sole allegation in Parent's Complaint concerns the implementation of one of Student's accommodations during the 2024-2025 school year. Specifically, Parent asserts that the District did not allow Student to complete her tests in a quiet environment with Paraprofessional. (FF # 11.)

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 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. Accessibility of and Responsibility for the IEP

As a preliminary matter, the CDE must determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d) to ensure staff have knowledge of Student's IEP. The Findings of Fact demonstrate that the District fulfilled this duty. Special Education Teacher provided a snapshot of the 2024 IEP to Student's teachers at the outset of the school year. (FF # 12.) She highlighted Student's accommodations and offered to discuss ways to implement the accommodations. (*Id.*) Literacy Teacher acknowledged that she received a copy of the 2024 IEP at that time. (FF # 13.) These facts make clear that the District acted in accordance with its obligation under the IDEA.

However, fulfilment of this responsibility becomes a bit more complicated with regard to the 2025 IEP. Literacy Teacher attended a pre-meeting to discuss revising Student's testing accommodation. (FF # 21.) Though the attendees did not decide on any specific language during the meeting, they discussed how it would be strengthened to ensure it was implemented across all settings with fidelity. (*Id.*) According to Parent, the accommodation was an "emphasis" of the meeting. (*Id.*) Literacy Teacher only attended a portion of the actual IEP Team meeting, and no

one could recall which portions of the meeting she did and did not attend. (FF # 22.) It is unclear whether Literacy Teacher received a final copy of the 2025 IEP before March 17, but, regardless, she attended a meeting on March 3 to discuss Student's accommodation in light of the incident on February 21. (FF # 20.) Though the District's actions may not have been perfect—especially the delay in Special Education Teacher providing the new IEP to Literacy Teacher—the CDE finds and concludes that Literacy Teacher was informed or, at least, had numerous opportunities to be informed of the requirements of Student's IEPs. As such, the District complied with 34 C.F.R. § 300.323(d).

B. Implementation of Student's Accommodation

Though Student's IEPs contained numerous accommodations, only one is at issue in this investigation: Student's ability to complete tests in a quiet environment with dedicated adult support. (FF #s 8, 11.)

With regard to the 2024 IEP, Parent has alleged that the District required Student to complete testing in the classroom without the assistance of her dedicated adult support. (FF # 11.) Paraprofessional—who provides Student's dedicated adult support—recalled at least one specific instance in which Student completed a test with the support of another paraprofessional. (FF #s 15-19.) While past practice might have suggested Student would complete testing with Paraprofessional outside her classroom, the plain language of the 2024 IEP simply did not require that accommodation to be made. (*Id.*) The 2024 IEP stated that Student would have "access to 1:1 paraprofessional support (also provided during testing)." (FF #s 8, 15.) Neither this accommodation nor any other provision in the 2024 IEP dictated the location for Student's testing. (FF # 8.) Similarly, the 2024 IEP did not mandate that Paraprofessional support Student but, instead, left open the possibility that the support could be provided by any paraprofessional. (*Id.*) For these reasons, the CDE finds and concludes that the District implemented Student's testing accommodation under the 2024 IEP.

As detailed in the Findings of Fact, the language of Student's accommodation changed significantly with the 2025 IEP. (FF #s 24, 26.) The 2025 IEP indicated that Student would receive "[a]ccess to Dedicated Adult Support during testing (literacy and math) in a 1:1 quiet environment." (FF # 24.) The subsequent amendment clarified that this access applied to testing of any sort, regardless of subject. (FF # 26.)

The District has conceded that Student was not permitted access to her accommodation during testing on March 17. (FF # 29.) During that incident, Literacy Teacher required Student to complete a test with Paraprofessional's support in the classroom, instead of the 1:1 quiet environment specified in her IEP. (*Id.*) Based on this, the CDE finds and concludes that the District did not fully implement Student's testing accommodation, resulting in noncompliance with 34 C.F.R. § 300.323.

C. Materiality of Noncompliance

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. Not every deviation from an IEP's requirements results in a denial of FAPE. Only the failure to implement a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822.

Here, the District did not provide Student access to her testing accommodation during a single incident on March 17. (FF # 29.) Though Student completed the test with the required adult support, she was not permitted to take the test in a quiet space. (*Id.*) The District acknowledged this was inconsistent with Student's IEP. (*Id.*) However, this accommodation was one of many in Student's IEP, and the implementation error occurred only once. (FF #s 8, 29, 31.) This accommodation does not constitute a material or essential element of Student's IEP. This is especially true given Student's young age and the diminished role of tests for second-grade students (versus, for example, a high school student). Accordingly, the CDE finds and concludes that the District's noncompliance did not result in a denial of FAPE. For that reason, no Student-specific remedies have been ordered.

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature and 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 authorities, 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 noncompliance appeared to stem from the actions of one teacher. The identified noncompliance impacted a single student on a single day. The Record does not suggest that this noncompliance extended beyond Student. Accordingly, the SCO finds and concludes that the District's noncompliance was isolated and not systemic.

REMEDIES

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

1. Implementing Student's IEP, as required by 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Friday, June 27, 2025**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director of Special Education, Principal, Special Education Teacher, Paraprofessional, and Literacy Teacher must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.323 by **Friday, July 25, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Wednesday, July 30, 2025**.

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

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

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

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 30th day of May, 2025.



Ashley E. Schubert
Senior State Complaints Officer

APPENDIX

Complaint, pages 2

- Exhibit 1: Email and IEP

Response, pages 4

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: Service Logs
- Exhibit D: Amendment to IEP
- Exhibit E: Notice of Meeting
- Exhibit F: Schedule and Grades
- Exhibit G: Progress Reports
- Exhibit H: District Calendar
- Exhibit I: District Policies and Procedures
- Exhibit J: Email Correspondence
- Exhibit K: Witness list
- Exhibit L: Additional Email Correspondence

Reply, pages 4

- Exhibit 2: Additional Witnesses
- Exhibit 3: IEP
- Exhibit 4: Student's Revised Schedule
- Exhibit 5: Highlighted Accommodations

Telephone Interviews

- Literacy Teacher: May 5, 2025
- Paraprofessional: May 1, 2025
- Parent: May 6, 2025
- Special Education Teacher: May 1, 2025