

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

**State-Level Complaint 2024:533
Adams County School District 14J**

DECISION

INTRODUCTION

On March 15, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Adams County School District 14J (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 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 March 14, 2023 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP during the 2023-2024 academic year, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to make Student’s IEP accessible to service providers responsible for its implementation; and
 - b. Failing to provide accommodations required by Student’s IEP, specifically large print, audiobooks, fewer items per page on work sent home, low-clutter presentation of schoolwork, individual copies of whole group presentations,

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.

access to use of a felt-tip pen, and reduction of number of problems on assignments.

2. Failed to develop an IEP that was tailored to meet Student's individualized needs during the 2023-2024 academic year because special education and related services in the areas of literacy and mathematics were not based on peer-reviewed research to the extent practicable, in violation of 34 C.F.R. § 300.320(a)(4).

FINDINGS OF FACT

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

A. Background

1. Student is thirteen years old and attends a District middle school in sixth grade. *Exhibit A*, p. 1; *CDE Exhibit 3*. He qualifies for special education under the disability categories of Specific Learning Disability, Other Health Impairment, and Visual Impairment Including Blindness.
2. Student is sweet, creative, funny and a role model for his peers. *Interviews with Parent, Student's current special education teacher ("Special Education Teacher 1"), Student's teacher of the visually impaired and orientation and mobility specialist ("Vision Specialist"), and Student's general education mathematics teacher ("Math Teacher")*. He is respectful to adults and peers, and is diligent with respect to schoolwork. *Interviews with Parent, Special Education Teacher 1, and Student's general education language arts teacher ("Language Arts Teacher")*. Student's interests include Legos, anime, and playing with his brothers and dogs. *Interview with Parent; Exhibit A*, p. 9.
3. Student is affected by visual impairments which contribute to both limited visual acuity and a narrow range of vision. *Interviews with Parents and Vision Specialist; Exhibit A*, p. 6. He is also affected by Attention Deficit Hyperactivity Disorder. *Exhibit A*, p. 9.
4. This investigation involves an IEP dated March 20, 2023 (the "IEP"), which was in effect during the 2023-2024 academic year. *Exhibit A*. It was developed after a District evaluation of Student in April 2021. *Response*, p. 3.

B. Student's IEP

5. Student's IEP documents his academic strengths in language and functional strengths including motivation and focus. *Exhibit A*, p. 3.
6. The IEP's present levels of performance section describes his work on his IEP goals, and the progress that he has made toward them over the prior year. *Id.* at pp. 3-8.

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

7. The IEP's Student Needs and Impact of Disability section documents that Student's vision impairment impacts his ability to access information at school, and that his learning disability causes him to need support in reading, written language, and math to access the general education curriculum. *Id.* at p. 9.
8. The IEP notes that Student requires a learning media plan due to his visual impairment and a health care plan due to health concerns. *Id.* at p. 10.
9. The IEP contains eight goals: one each in the areas of reading and writing, two in mathematics, three in vision, and one pertaining to orientation and mobility. *Id.* at pp. 10-15. Relevant to this investigation, one of Student's vision goals proposed that Student would demonstrate proficiency with accessibility technology including magnification tools. *Id.*
10. The IEP lists 40 accommodations. *Id.* at pp. 16-17. Of these accommodations, seven are relevant to this investigation:

- Large print-24 point font
- Text instruction in audio format-access to audio books
- Fewer items per page
- Low clutter presentation
- Individual copy of whole group presentation/lesson prior to instruction
- Use of felt tip pens or dark ink writing utensils
- Reduction of number of problems in problem set

Id.

11. The IEP stated: "No curricular modifications were identified by the team." *Id.*
12. The IEP identified services in the area of specialized instruction, vision services, and orientation and mobility to be delivered to Student. *Id.* at pp. 19-20. With respect to specialized instruction, the IEP's service delivery statement stated that Student would "receive 350 minutes a week of sped support in reading, written language and math in order to fully access the regular education curriculum." *Id.* at p. 19.
13. The IEP Team determined it was appropriate for Student to be in the general education classroom 77.1% of the time. *Id.* at p. 21.

C. District's Policies, Practices and Procedures

14. District uses a comprehensive 64-page special education policy and procedure manual, which describes District's responsibilities under the IDEA and ECEA. *Exhibit J*. District's Director of Special Education ("Director") states that all staff involved with the implementation of IEPs have access to this manual via District's educational data management platform. *Interview with Director*.
15. Director stated that she directs teachers and service providers to implement students' IEPs with fidelity and provides extensive training to help ensure that they are knowledgeable about their responsibilities. *Id*.
16. Staff responsible for implementing a student's IEP have ongoing access to that IEP through the District's educational data management platform. *Interview with Director; Exhibit J*, p. 47.
17. District's policy and procedure manual states: "We use researched-based curriculum that aligns with Colorado Academic Standards and focuses teaching and learning on evidence-based student outcomes." *Exhibit J*, p. 54.
18. The manual provides a hyperlink to a document titled "Grades 6-12 District Curriculum," which indicates that District middle schools use the McGraw Hill "StudySync" curriculum for English language arts and the Houghton Mifflin Harcourt Into Math curriculum for mathematics. *Exhibit J*, p. 54; *Exhibit I*.
19. Director stated that the methods of instruction to be used for a student on an IEP should be determined by that IEP team based on the student's individualized needs. *Interview with Director*. When possible, instruction should track the District's curriculum to promote integration into the general education environment. *Id*.

D. Student's Performance

20. Student's grades for the fall semester of the 2023-2024 academic year consist of five As and two Bs. *Exhibit F*, p. 1.
21. Based upon the most recent progress reports issued as of April 22, 2024, Student's grades for the spring semester consist of four As, two Bs and one C. *CDE Exhibit 12*.
22. Based upon IEP goal progress reports issued on March 14, 2024, the end of the third quarter of the 2023-2024 academic year, Student has made progress on each of his eight goals and met two of them. *Exhibit F*, pp. 3-8.
23. Student's scores on the DIBELS benchmark reading assessment improved from a composite score of 145 at the beginning of the 2023-2024 academic year to a composite score of 254 at the middle of the 2023-2024 academic year. *Id*, p. 1.

E. IEP Implementation: Accessibility and Responsibilities

24. Student's general education teachers and his typical special education teacher indicated that they were made familiar with his IEP prior to the start of the 2023-2024 academic year. *Interviews with Language Arts Teacher, Math Teacher, and Special Education Teacher 1.*
25. They also indicated that Vision Specialist sent a periodic email to all of Student's teachers reviewing Student's IEP accommodations and offering assistance to any teachers who needed help adapting their assignments to meet those accommodations. *Id.* Vision Specialist sent such emails on August 4, 2023, October 5, 2023, November 27, 2023, and January 5, 2024. *Exhibit K*, pp. 87, 188, 279, 317.
26. Each of these emails contained a list of Student's accommodations. *Id.* The January 5, 2024 email stated "I would like to thank and hugely commend all of you to ensuring this student has access to all his materials electronically, I know some of you have to pivot quickly with him attending your class and I'm impressed with how quickly you made it happen." *Id.* at p. 87. Each email contained an offer of assistance with implementing accommodations. *Id.* at pp. 87, 288, 279, 317. For example, the November 27, 2023 email stated "Please let me know how I can help support getting items into electronic format or if there are any other accommodations that I can clarify." *Id.* at p. 190.
27. School staff reported frequent collaboration with Vision Specialist to work on accommodations. *Interview with Language Arts Teacher, Math Teacher, Special Education Teacher 1, and Vision Specialist.*
28. During a two-week period in which Special Education Teacher 1 was unavailable, School's seventh-grade special education teacher ("Special Education Teacher 2") covered Student's classroom. *Interviews with Special Education Teachers 1 and 2.*
29. Prior to working with Student's class, Special Education Teacher 2 reviewed Student's IEP via the District's data management system. *Interview with Special Education Teacher 2.* He also spoke to Vision Specialist about Student's accommodations. *Id.*

F. IEP Implementation: Accommodations

30. Parent stated that she was concerned that the accommodations outlined in Student's IEP were not being consistently followed. *Interview with Parent.*

Large print font

31. Student's IEP contains an accommodation which reads: "Large print-24 point font." *Exhibit A*, p. 15.
32. Parent stated that her understanding of this accommodation is that all materials provided to Student should be in 24-point font. *Interview with Parent.*

33. School staff described their understanding of this accommodation as requiring that Student be able to view all materials in large print, whether that involves text being printed in large font on the page or Student being able to magnify text to that size using his assistive technology. *Interviews with Language Arts Teacher, Special Education Teacher 1, and Vision Specialist.*
34. Student uses a number of assistive technology tools in the classroom to help read his materials. *Interview with Vision Specialist.* These tools include a handheld magnifier which can be used to enlarge text. *Id.* They include a CCTV – a device consisting of a camera which can be pointed at a document or book on Student’s desk or flipped forward toward the whiteboard at the front of the room and which displays a zoomable image of that document or book onto a monitor for Student. *Id.* Student can also access materials on his laptop or tablet, both of which have software tools to allow for the magnification of images and text. *Id.* Student has a monocular – a handheld telescope-like device used for checking text in the distance. *Id.* Finally, Student has access to his personal cell phone, which includes accessibility tools which allow him to magnify both nearby and far text. *Id.*
35. Vision Specialist trained Student on the use of each of these devices has spoken to all of Student’s teachers about these devices, and demonstrated their use. *Id.*
36. Vision Specialist explained that although both providing large-print documents and allowing Student to enlarge text himself using assistive technology allow Student to access information in equal measure, the latter helps reinforce skills that Student will need to use to access his community. *Id.*
37. Following a March 15, 2024 IEP meeting, this accommodation was modified to read “Large print-24 point font-if magnification tools are unavailable.” *CDE Exhibit 3, p. 9.*
38. District provided examples of work given to Student featuring text, that when copied and pasted into a word processor, was recognized as 24-point size. *Exhibit N, pp. 1-14.* Other examples of work provided to Student contain text recognized as 11-point size, with his submitted typed response recognized as 20-point size. *Id. at pp. 15-18.*
39. Parent provided examples of work provided to Student which contained text SCO was unable to copy and paste into a word processor. *Exhibit 11.* Visual comparison, however, indicates that this text approximates to 14-point size. *Id.*
40. Accordingly, the SCO finds and concludes that although Student was provided 24-point size text on some occasions, he was not consistently provided 24-point size text. The SCO further finds that Student had access to assistive tools which allowed him to view any size text at 24-point size or larger.

Provision of audiobooks

41. Student's IEP contains an accommodation which reads: "Text instruction in audio format-access to audio books." *Exhibit A*, p. 15.
42. Parent and School staff both stated this accommodation required that Student be provided audiobooks when available in language arts classes. *Interviews with Parent, Language Arts Teacher, Special Education Teacher 1, and Vision Specialist*.
43. Parent stated that she believed that Student was not provided an audiobook copy of "The Wizard of Oz," a book which Student chose for an independent reading assignment in language arts class. *Interview with Parent*.
44. Student chose this book during Special Education Teacher 2's coverage of Student's class. *Response*, p. 6. Special Education Teacher 2 asked Student if he wanted access to an audiobook, and Student declined, saying that he wished to attempt to read the book visually using his assistive tools. *Id.*
45. Special Education Teacher 2 checked Student's comprehension as he read and assessed that comprehension through an assignment which asked Student to describe his understanding of the setting, the conflict of the book, and the connection between the setting and conflict after having read the first chapter. *Interview with Special Education Teacher 2; Exhibit N*, p. 26. Student's responses to this assignment indicate that he was able to comprehend the text of the book. *Exhibit N*, p. 26.
46. Audiobooks are accessible to Student via a program called Bookshare, which is managed for Student by Vision Specialist. *Interview with Vision Specialist*. If a teacher assigns a book, that teacher notifies Vision Specialist, who then makes the book available for Student to listen to. *Id.*
47. Vision Specialist provided logs of Student's assigned audiobooks. *CDE Exhibit 2*. These logs indicate that 15 audiobooks have been assigned to Student. *Id.* Notably, the audiobook for "The Wizard of Oz" was provided to Student on December 5, 2023, shortly after Student chose the book as his reading assignment. *Id.* These logs show that other books assigned to Student during the 2023-2024 academic year were also made available to Student. *Id.*
48. Based on these facts, the SCO finds that District provided Student access to audiobooks during the 2023-2024 academic year.

Fewer items per page

49. Student's IEP contains an accommodation which reads: "Fewer items per page." *Exhibit A*, p. 15.

50. Parent described her understanding of this accommodation as requiring that School staff provide Student with materials that feature fewer items per page to minimize distraction. *Interview with Parent.*
51. School staff described a similar understanding but noted that Student's assistive technology enabled him to view only a magnified portion of any materials, so that only one problem would be visible to Student at any one time. *Interviews with Vision Specialist, Math Teacher, Language Arts Teacher, and Special Education Teacher 1.*
52. District provided several examples of math worksheets provided to Student that featured one or two questions per page. *Exhibit N*, pp. 1-14. Language Arts Teacher provided an example of a graphic organizer she provided to Student which she states was created for Student and which contains fewer items per page. *CDE Exhibit 8.*
53. Parent provided examples of math worksheets on which Student was provided four to five word problems per page. *Exhibit 13*, pp. 1-2, 6. Parent also provided examples of timed arithmetic drills given to Student, in which students are asked to complete as many of the 48 simple arithmetic problems on the page as they are able within one minute. *Id.* at pp. 3-4.
54. Based on these facts, the SCO finds that Student was frequently, but not always, provided with fewer items per page.

Low-clutter presentation

55. Student's IEP contains an accommodation which reads: "Low clutter presentation." *Exhibit A*, p. 15.
56. Parent described her understanding of this accommodation as being duplicative of the "fewer items per page" accommodation. *Interview with Parent.*
57. Vision Specialist explained that while there could be overlap between the two accommodations, "low clutter presentation" requires that staff remove distracting images and fonts from materials provided to Student. *Interview with Vision Specialist.* Teachers indicated a similar understanding. *Interviews with Language Arts and Math Teachers.*
58. Vision Specialist noted that work provided to middle and high school students, in contrast to elementary school work, does not typically include distracting visuals. *Interview with Vision Specialist.*
59. Language Arts Teacher stated that when creating slideshows for her class, she seeks to remove unnecessary images from those slides in order to keep them simple for students who struggle with distracting images. *Interview with Language Arts Teacher.*
60. Samples of work provided by both District and Parent indicate that materials provided to Student do not contain distracting fonts, and in rare occasions where images are

present and unnecessary to illustrate a math problem, they are small and unobtrusive. See generally, Exhibits 11, 13, and 14; Exhibit N; CDE Exhibit 1.

61. Based on these facts, the SCO finds that materials provided to Student featured low-clutter presentation.

Individual copies of group presentations

62. Student's IEP contains an accommodation which reads: "Individual copy of whole group presentation/lesson prior to instruction." *Exhibit A*, p. 15.

63. Parent and School staff both described this accommodation as requiring that Student be provided with access to copies of any presentation given to the whole class. *Interviews with Parent, Language Arts Teacher, Math Teacher, and Special Education Teacher 1*.

64. Parent expressed an additional concern that prior to language arts class, Language Arts Teacher would occasionally present a discussion question, called a "Do Now," at the beginning of the class period by writing it on the whiteboard. *Interview with Parent*. Parent stated that she believed that because of his visual impairment, Student did not have access to the information on the board. *Id.*

65. Student's CCTV assistive technology tool allows him to project content from the front of the room to the monitor on his desk. *Interview with Vision Specialist*.

66. Language Arts Teacher provided a screenshot of the presentations and materials that she shared with Student. *CDE Exhibit 9*. This screenshot indicates that Student was able to access many class presentations on his personal device, and furthermore shows that many "Do Now" assignments were shared via this method. *Id.*

67. Other teachers similarly indicated that group presentations were made available to Student on his personal device so that he could view them using his assistive technology. *Interviews with Math Teacher and Special Education Teacher 1*.

68. Based on these facts, the SCO finds that Student was provided individual copies of group presentations.

Access to use of a felt-tip pen

69. Student's IEP contains an accommodation which reads: "Use of felt tip pens or dark ink writing utensils." *Exhibit A*, p. 15.

70. Parent and Teachers indicated a shared understanding that this this accommodation requires that Student be allowed the choice to use felt-tip pens on written assignments. *Interviews with Parent, Language Arts Teacher, Math Teacher, and Special Education Teacher 1*.

71. Math Teacher and Special Education Teacher 1 reported that they have felt-tip pens on hand in the classroom and provide one to Student when he asks. *Interviews with Math Teacher and Special Education Teacher 2*. Language Arts Teacher reported that she does not keep felt-tip pens on hand, but Student is permitted to use the pens that he carries with him at his preference. *Interview with Language Arts Teacher*.
72. Math Teacher provided examples of graded worksheets on which Student was permitted to use a felt-tip pen. *CDE Exhibit 1*, pp. 1-2. The SCO finds that the markings on these worksheets use thicker pen strokes indicative of a felt-tip pen. *Id.*
73. Parent provided examples of work she states that Student has completed in pencil or non-felt pen. *Exhibit 13*. These worksheets feature thick markings, although on most, it is unclear whether they are the product of a felt-tip pen. *Id.* One worksheet, however, features markings that not only exhibit thicker pen strokes indicative of a felt-tip pen but also indicate fading typical of a felt-tip pen low on ink. *Id.* at p. 7.
74. Based on these facts, the SCO finds that Student was provided the opportunity to use felt-tip pens to complete his assignments.

Reduction of number of problems on assignments

75. Student's IEP contains an accommodation which reads: "Reduction in number of problems in problem set." *Exhibit A*, p. 16.
76. Parent and Teachers described a shared understanding that this accommodation requires that Student be assigned fewer problems than his peers. *Interviews with Parent, Math Teacher, and Special Education Teacher 1*.
77. Math Teacher described that she would assign Student only a limited number of problems per problem set, and Student would complete those problems. *Interview with Math Teacher*.
78. Parent provided examples of schoolwork in which she believed Student was not required to complete fewer problems. *Exhibit 13*. However, these items of schoolwork indicate that Student only completed a portion of the assignments on each sheet, consistent with Math Teacher's description. *Id.*
79. Based on these facts, the SCO finds that School staff assigned Student fewer problems on assignments.

G. District's Instructional Methods and Curricula

80. Parent expressed concern that School's instructional methods and curricula were not based on peer-reviewed research. *Interview with Parent*.

81. Specifically, Parent noted that StudySync, District’s sixth-grade literacy curriculum, was not listed on an “Advisory List of Instructional Programming” published by CDE. *Reply*, p. 12.
82. The list described in Parent’s Reply pertains to programming approved for use pursuant to the READ Act (C.R.S. § 22-7-1206), which concerns reading instruction in kindergarten through third grade. *CDE Exhibit 10*. Accordingly, all instructional programming listed in this document is designed for kindergartners through third graders. *Id.*
83. A CDE literacy specialist (“CDE Specialist”) noted that the READ Act’s requirement that CDE publish an advisory list of approved curricula is unique – for all grades beyond third grade, decisions regarding the selection of a literacy curriculum are the responsibility of individual school districts. *Consultation with CDE Specialist*.
84. The SCO finds that as a middle school serving grades 6 through 8, School has not erred in choosing a literacy curriculum outside of this Advisory List. *Id.*

Mode of Specialized Instruction

85. Student’s IEP team determined that Student’s specialized instruction should consist of “support in reading, written language and math in order to fully access the regular education curriculum.” *Exhibit A*, p. 19. No modifications to the general education curriculum were identified by the IEP Team. *Id.* at p. 16.
86. Student’s specialized instruction typically consists of pre-teaching and re-teaching. *Interviews with Special Education Teachers 1 and 2*.
87. Pre-teaching and re-teaching are methods by which a special education teacher identifies areas in the general education classroom in which a student may struggle due to a disability and exposes the student to those concepts both before and after a lesson with focused attention. *Interviews with Special Education Teachers 1 and 2; CDE Exhibit 7; Consultation with CDE Specialist*. These techniques are often successful in helping students with specific learning disabilities to access the general education curriculum. *Consultation with CDE Specialist*.
88. Peer-reviewed research indicates that pre-teaching and re-teaching are effective methods of instruction in the areas of language arts and mathematics. See, e.g., *CDE Exhibit 7*, pp. 2, 6 (“Pre-teaching of critical vocabulary [...] improved students’ reading comprehension by helping them identify target concepts. Pre-teaching of vocabulary was also effective in improving comprehension of social studies concepts. [...] Results indicate that both methods of instruction, pre-teaching and re-teaching, resulted in significant increases in Math Concepts, Math Problems, and Math Computation”).
89. Based on these facts, and in consultation with CDE Specialist the SCO finds that the instructional methods used in Student’s specialized instruction are based upon peer-reviewed research.

Literacy Curriculum

90. District's general education literacy curriculum for sixth grade is McGraw Hill's StudySync curriculum. *Exhibit I*.
91. This curriculum was developed by a team of highly qualified educational professionals and informed by academic research into literacy instruction. *CDE Exhibit 11*, pp. 6-8.
92. McGraw Hill provided three official publications describing the research-based foundations of the StudySync curriculum – "Science of Reading," "Student Engagement and Achievement in English Language Arts," and "Evidence for K-12 Literacy Solutions." *CDE Exhibits 5, 6 and 11*. Each article discussed the instructional methodologies of the StudySync curriculum and cite to peer-reviewed research. *Id.*
93. McGraw Hill also provided an article describing several efficacy studies of the StudySync curriculum on student growth across California, Kansas, Oklahoma, and Ohio. *CDE Exhibit 11*. One study found that sixth grade students' Measures of Academic Progress (MAP) assessment scores in English and language arts grew an average of 4.5 points under the StudySync curriculum, compared to 1.8 points the year prior to StudySync's implementation in the district. *Id.*, p. 16.
94. Based on these facts, and in consultation with a CDE Specialist, the SCO finds that District's 6th grade general education literacy curriculum, StudySync, is based on peer-reviewed research.

Mathematics Curriculum

95. District's general education mathematics curriculum for sixth grade is Houghton Mifflin Harcourt's Into Math curriculum. *Exhibit I*.
96. A representative for Houghton Mifflin Harcourt ("Curriculum Representative") stated that the Into Math curriculum is based on peer-reviewed research and is developed by a team of professionals at the company based upon that research. *Interview with Curriculum Representative*.
97. Curriculum Representative provided an 80-page report entitled "Into Math Research Foundations: Evidence Base" discussing the peer-reviewed research upon which the Into Math curriculum is based. *CDE Exhibit 4*. This report cites to 158 academic sources in describing the research basis for the curriculum. *Id.* at pp. 68-73.
98. Based on these facts, the SCO finds that District's sixth grade general education mathematics curriculum, Into Math, is based upon peer-reviewed research.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to properly implement Student’s IEP during the 2023-2024 academic year, in violation of 34 C.F.R. § 300.323. However, these failures to implement were not material, and did not result in a denial of FAPE.

Parent’s concern is that District failed to implement seven of Student’s accommodations with fidelity. (FF # 30).

A. IEP Implementation: Legal Requirements

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 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 district must ensure that each teacher and related services provider has access to the IEP and 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. IEP Accessibility and Responsibilities

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, each of Student’s teachers responsible for the implementation of his IEP had access to that IEP via the District’s data management system. (FF #s 16, 24). Those teachers consistently and accurately described their responsibilities under the IEP. (FF #s 33, 42, 51, 57, 63, 70, 78).

Moreover, Vision Specialist took on notable responsibility in ensuring that Student’s teachers were familiar with his vision-related accommodations, sending monthly emails reminding teachers of their responsibilities. (FF #s 25-26). Vision Specialist also worked directly with teachers to adapt work to meet Student’s accommodations. (FF #s 27, 29).

For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the 2023-2024 academic year were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

C. Implementation of Accommodations

The SCO must determine whether District made accommodations available to Student in accordance with the IEP for the 2023-2024 academic year. 34 C.F.R. § 300.323(c)(2).

Here, the IEP identifies 40 accommodations, seven of which are relevant to this investigation: (1) large print font; (2) audiobooks; (3) fewer items per page; (4) low clutter presentation; (5) individual copies of whole group presentations; (6) use of felt tip pens; and (7) reduction of number of problems in problem set. (FF # 10).

With respect to five of these accommodations, District implemented them with fidelity. (FF #s 48, 61, 68, 74, 79).

The “large print font” accommodation was sometimes, but not always, provided to Student. (FF # 40). However, on those occasions when Student was provided with materials in font smaller than 24-point size, he was able, using assistive technology, to magnify that text to allow him to read it at a comfortable size. (FF #s 34-36). Nevertheless, prior to a March 15, 2024 IEP meeting which modified this accommodation to allow Student to use his assistive technology to read smaller-print text, the IEP required the provision of 24-point size text. (FF # 37). District provided examples of assignments which used 24-point size text, but other assignments indicated smaller text size. (FF #s 38-39.)

Likewise, the “fewer items per page” accommodation was frequently, but not always, provided to Student. (FF # 54). District noted that, like with the large print accommodation, Student could accomplish the same effect through use of his assistive technology. (FF # 51). District also provided examples of assignments on which fewer items appeared per page. (FF # 52). However, other assignments completed by Student appear not to have been modified to visually accommodate Student. (FF # 53).

Accordingly, the SCO finds and concludes that District failed to fully implement two accommodations on Student’s IEP, in violation of 34 C.F.R. § 300.323.

D. Materiality of the Failure to Implement the IEP

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. Appx. 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. District 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. Appx. 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 failed to implement two accommodations on some but not all occasions. (FF #s 40, 54). These accommodations pertained to the provision of materials in a format that would not require Student to make use of his assistive technology. (FF #s 33-36, 51). However, Student’s IEP goals propose that he develop and demonstrate proficiency with that magnification technology which the faithful implementation of these accommodations renders unnecessary. (FF # 9). District is obligated to implement Student’s accommodations with fidelity, but also to instruct Student in such a way as to enable him to progress toward his goals. See *Andrew F.* Here, District chose the latter course, prioritizing Student’s ability to benefit from the IEP over strict adherence to the text of the accommodations. Notably, District also reviewed Student’s IEP and revised it to bring Student’s accommodations into alignment with his goals. (FF # 37).

Moreover, these minor failures did not materially impact Student’s ability to be involved in and make progress in the general education curriculum. He showed progress in each of his annual goals, achieved strong grades in his classes, and showed substantial improvement in standardized assessment. (FF #s 20-23).

Accordingly, the SCO finds and concludes that although District failed to implement Student’s accommodations with fidelity, these failures were not material, and thus do not constitute a denial of FAPE.

Conclusion to Allegation No. 2: District developed an IEP that was tailored to meet Student’s individualized needs during the 2023-2024 academic year because special education and related services in the areas of literacy and mathematics were based on peer-reviewed research to the extent practicable, in compliance with 34 C.F.R. § 300.320(a)(4). No IDEA violation occurred.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Developing an IEP that is reasonably calculated is a “fact-intensive exercise” that is “informed not only by the expertise of the school officials, but also by the input of the child’s parents or guardians.” *Id.* at 999.

An IEP must contain—among other components—a “statement of the special education and related services and supplementary aids and services, *based on peer-reviewed*

research to the extent practicable, to be provided to a child.” 34 C.F.R. § 300.320(a)(4) (emphasis added). As this section makes clear, special education and related services must be based on peer-reviewed research only to the extent practicable. Moreover, the IEP is not required to identify specific curriculum or methodology for instruction. “[P]arents, no matter how well-motivated, do not have a right under the [IDEA] to compel a school district to provide a specific program or employ a specific methodology.” *Lachman v. Ill. State Bd. of Ed.*, 852 F.2d 290, 297 (7th Cir. 1988).

As long as the IEP is procedurally compliant, the specialized knowledge and expertise of the professional educators can reasonably be relied on in determining that the resulting IEP is substantively appropriate. *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1318 (10th Cir. 2008) (relying on *Board of Educ v. Rowley*, 458 U.S. 176 (1982)). “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. The absence of a bright-line rule should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Endrew*, 137 S. Ct. at 992 (citing *Rowley*, 458 U.S. at 206).

“[C]ourts must be careful to avoid imposing their view of preferable education methods upon the states.” *Joshua v. Rocklin Unified Sch. Dist.*, No. CV 07-01057, 2008 WL 906243, at *3 (E.D. Cal. Mar. 31, 2008). The analysis is not on whether the District employed a methodology preferred by a parent, but rather whether the District employed an appropriate methodology. See *Stanley C. v. M.S.D. of Sw. Allen Cty. Sch.*, 628 F. Supp. 2d 902, 967 (N.D. Ind. 2008). If a school’s methodology is appropriate, the student is not denied a FAPE simply because the parents prefer a different method. *Id.*

CDE follows this approach in its State Complaint decisions. If an instructional method is determined by qualified instructors to be appropriate to a student’s needs, and is found to be supported by peer-reviewed research, an SCO should defer to that determination. See, e.g., CDE Decisions 2021:504 (May 2021) and 2021:521 (November 2021).

A. Mode of Specialized Instruction

Here, Parent is concerned that the instructional methods used to instruct Student are not based on peer-reviewed research. (FF # 80).

Student’s IEP Team determined, based on his individualized needs, that his specialized instruction would involve support in reading, written language, and mathematics to access the unmodified general education curriculum. (FF # 83). Student’s special education teachers chose to support Student primarily through the techniques of pre-teaching and re-teaching. (FF # 85).

These techniques are not novel and are discussed in peer-reviewed educational research which shows that these modes of instruction show substantial results in both language arts and mathematics. (FF # 87). Moreover, these techniques have proven effective with respect to Student, who continues to show progress on all his IEP goals and achieve

strong grades. (FF #s 20-22). Student also shows substantial improvement through standardized assessment. (FF # 23).

Accordingly, the SCO finds and concludes that the instructional methods used to implement Student's IEP are based upon peer-reviewed research.

B. District's General Education Curricula

Parent also expressed concern regarding the District's general education literacy and mathematics curricula. (FF #s 80-81). These curricula are the basis not only of Student's instruction, but of all general education students in the District. (FF # 18). These curricula were selected by district to align with the Colorado Academic Standards and chosen due to their evidence-based student outcomes. (FF # 17).

Both the literacy and math curricula are based upon a comprehensive research base, with each providing numerous citations to peer-reviewed research underlying their respective methods. (FF #s 90-92, 95-96).

Accordingly, the SCO finds that both District's literacy and mathematics curricula are based upon peer-reviewed research.

Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities if not corrected.

Pursuant to its general supervisory authority, 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, nothing in the Record indicates that District's violation is systemic in nature. District provides staff with guidance regarding IEP implementation, and all staff involved were knowledgeable about their responsibilities with respect to Student's IEP. (FF #s 15, 24-29). District also has a comprehensive special education policy manual available to staff. (FF # 14). Of the forty accommodations in Student's IEP, District implemented 38 with fidelity, and implemented the remaining two accommodations with fidelity on most occasions. (FF #s 30-79). To the extent the implementation of these accommodations may have interfered with Student's ability to access his assistive technology, District reviewed and revised Student's IEP to better suit his needs. (FF # 37).

For these reasons, the SCO finds and concludes that District's failure to implement the IEP is not systemic in nature.

REMEDIES

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

- a. Failed to properly implement Student's IEP during the 2023-2024 academic year, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Friday, June 14, 2024**, 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 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 District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Special Education Director must review this Decision. This review must occur no later than **Friday, June 14, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Friday, June 21, 2024**.

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 7th day of May, 2024.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-7

Response, pages 1-12

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: Documentation from IEP meetings
- Exhibit D: PWNs
- Exhibit E: Notices of Meetings
- Exhibit F: Report cards and progress monitoring
- Exhibit G: Attendance records
- Exhibit H: District Calendar
- Exhibit I: District curricula
- Exhibit J: District policies and procedures
- Exhibit K: Correspondence
- Exhibit L: Information regarding District and School staff
- Exhibit M: Verification of delivery
- Exhibit N: Work samples

Reply, pages 1-16

- Exhibit 1: Meeting recording
- Exhibit 2: DIBELS scoring scale
- Exhibit 3: Video of parent educational portal
- Exhibit 4: CDE Language Arts standards
- Exhibit 5: CDE Mathematics standards
- Exhibit 6: Service Logs
- Exhibit 7: Emails regarding compensatory services
- Exhibit 8: Emails regarding locker
- Exhibit 9: Emails regarding informed consent
- Exhibit 10: Placement letter
- Exhibit 11: Examples of large print
- Exhibit 12: Examples of font sizes
- Exhibit 13: Examples of fewer items per page
- Exhibit 14: Examples of low-clutter presentation
- Exhibit 15: Demonstration of Student's visual field
- Exhibit 16: Meeting Recording
- Exhibit 17: IEP Meeting Recording
- Exhibit 18: CDE Procedural Guidance

CDE Exhibits

- CDE Exhibit 1: Additional work samples

- CDE Exhibit 2: Audiobook documentation
- CDE Exhibit 3: Student IEP (3/15/2024)
- CDE Exhibit 4: Publication: “Into Math National Research Foundations Paper”
- CDE Exhibit 5: Publication: “StudySync Science of Reading”
- CDE Exhibit 6: Publication: “Student Engagement and Achievement in English Language Arts”
- CDE Exhibit 7: Publication: “The Effects of Pre-Teaching and Re-Teaching”
- CDE Exhibit 8: Graphic Organizer
- CDE Exhibit 9: Electronically shared materials
- CDE Exhibit 10: CDE Advisory List of Instructional Programming
- CDE Exhibit 11: Publication: “Evidence for K-12 Literacy Solutions”
- CDE Exhibit 12: Updated Grades

Telephone Interviews

- Vision Specialist: April 18, 2024
- Math Teacher: April 18, 2024
- Special Education Teacher 1: April 18, 2024
- Language Arts Teacher: April 19, 2024
- Special Education Teacher 2: April 19, 2024
- Special Education Director: April 19, 2024
- Mathematics Curriculum Representative: April 26, 2024