

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

State-Level Complaint 2023:506
Boulder Valley School District RE-2

DECISION

INTRODUCTION

On January 25, 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 (the “Complaint”) against the Boulder Valley School District RE-2 (“District”). The State Complaints Officer (the “SCO”) determined that the Complaint identified one (1) allegation 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 (“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 January 25, 2022 through January 25, 2023 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, from February 28, 2022 to present, specifically by failing to provide accommodations as required by the 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. Student is a thoughtful, personable, and respectful sixteen-year-old, with interests in anime and mountain biking. *Interviews with Case Manager, Parent, General Education Algebra Teacher (“Algebra Teacher”), General Education Geometry Teacher (“Geometry Teacher”), and General Education World History Teacher (“History Teacher”); Exhibit A, p. 1.* Student qualifies for special education and related services under the Other Health Impairment disability category, with a secondary disability of Specific Learning Disability. *Exhibit A, p. 28.*
2. During the 2021-2022 academic year, Student attended ninth grade at a District high school (“School”). *Exhibit A, pp. 1, 28.* School is a choice enrollment, and offers a primarily asynchronous, online-based program. *Response, p. 1.*
3. At School, students access lessons through prerecorded videos and complete and submit assignments on School’s online portal – Schoology. *See id.; Interviews with Principal, Case Manager, Algebra Teacher, Geometry Teacher, History Teacher, and Parent.* Students can also use Schoology to view up-to-date information about grades on assignments and assessments, and teachers can use Schoology to communicate with students, both generally, and through individual comments on specific assignments or quizzes/tests. *Interviews with Principal, Case Manager, Geometry Teacher, Algebra Teacher, and History Teacher.*
4. At School, students can meet directly with teachers during regularly scheduled weekly group check-in times and individual lab times. *Response, p. 1.* The lab at School is open three days a week for a full school day, and students can come at any point while lab is open to get in-person support from general education teachers. *Interview with Principal.* Students who are eligible for special education and related services also have scheduled synchronous face-to-face or virtual meetings with teachers for specialized instruction, related services, and supports. *Id.; Response, p. 1.*
5. Student entered the 2021-2022 academic year with an IEP that was developed during the previous academic year (the “2021 IEP”). *Exhibit A, pp. 1-27.* On February 9, 2022, a properly composed IEP Team met to review and revise the 2021 IEP (the “2022 IEP”). *See Exhibit A, pp. 28-29.*

B. The 2022 IEP

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

6. The 2022 IEP documented Student's strengths, preferences, and interests, including that he is friendly, polite, and empathetic, and that he is an "avid" athlete. *Id.* at p. 30. Student performs best when teachers take time to build a positive rapport and establish a trusting, supportive relationship with Student, and he responds well to encouragement and positive feedback. *Id.* Student has positive friendships with peers outside of School, and he is better able to demonstrate his understanding when he is given the opportunity to provide an oral response instead of a written one. *Id.*
7. The 2022 IEP reviewed Student's present levels of performance, summarizing the results of his last educational evaluation (including the results of an independent educational evaluation ("IEE") administered in 2020), grades, progress toward annual goals, observations from teachers, and Student's responses to a student survey. *Id.* at pp. 30-37.
8. The Student Needs and Impact of Disability section documented that, due to his disability, Student struggles with inattentive presentation, attention, "cognitive fatigue," attention to details, following and processing multi-step directions, processing information quickly, organization, and time management. *Id.* at p. 38. His executive functioning difficulties, including processing speed deficits, impact his ability to compute math facts quickly and perform his best on timed assessments across subjects. *Id.* Student's secondary disability of Specific Learning Disability impacts his ability to read grade level texts at an efficient pace without "cognitive fatigue," and his writing deficits impact his ability to generate and produce written work, express his ideas, organize his thoughts, and spell accurately. *Id.*
9. The Parent/Student Input section documented detailed input from Parent, such as Parent's requests for additional accommodations (e.g., use of a "cheatsheet" for tests and allowing Student to voice/record lectures and notes). *Id.* at p. 39. The 2022 IEP also documented Parent's concerns about Student's education, such as Student needing more support and intervention in math. *Id.*
10. The 2022 IEP contained a post-school goal for Student to either go to college following graduation with a focus on engineering or to become a professional mountain biker. *Id.* The Post-Secondary Transition Plan indicated that Student would take the pre-college curriculum at School, and contained detailed information about Student's course credits, as well as the remaining courses Student must take to graduate. *Id.* at pp. 40-41
11. The 2022 IEP contained five annual goals in the areas of reading, writing, and self-determination. *Id.* at pp. 42-44.
12. The 2022 IEP contained 28 accommodations to help Student access the general education curriculum, including having larger assignments broken down into chunks or smaller tasks (e.g., a "pacing guide"), access to speech-to-text software, and access to a student-generated notecard for reference during tests and quizzes. *Id.* at pp. 44-45. Some of the

accommodations from the 2021 IEP, such as preferential seating and frequent checks for understanding, were written for times when Student received in-person instruction, such as during specialized instruction and labs. *See id.*; *Interviews with Parent and Case Manager*.

13. Relevant to this investigation are the following accommodations:

- a. Reduced assignments without impacting standards as determined by teacher;
- b. Opportunity to complete test corrections when scoring at or below a 79 percent on initial assessment; and
- c. Timely communication between School and home when Student is either falling behind in class or struggling to understand the material.

Id. at pp. 44-45.

14. The Service Delivery of the 2022 IEP provided for 60 minutes per week of direct specialized instruction and “up to 60 minutes per week” of indirect “consult support” from a special education teacher, as well as 60 minutes per month of direct instruction in self-determination and 60 minutes per semester of indirect “consult support” from a school psychologist. *Id.* at pp. 47-48.

15. The IEP Team determined it was appropriate for Student to be in the general education environment at least 80 percent of the time. *Id.* at p. 48.

16. The Prior Written Notice (the “PWN”) section of the 2022 IEP contained extensive and detailed information about other options considered by the IEP Team, to include the IEP Team’s response to Parent’s concerns and requests for new accommodations and changes to service minutes. *Id.* at pp. 49-51. The 2022 IEP contained detailed information on why the IEP Team rejected some of Parent’s requests, such as for math intervention; however, other requests, such as Parent’s request for Student to be allowed a “cheatsheet” during tests and quizzes, were incorporated into the 2022 IEP. *Id.* at pp. 44, 49-51.

17. Parent’s concern here is that District failed to implement the 2022 IEP from February through May, and again from August through December of 2022, by failing to provide accommodations as required by the 2022 IEP. *Complaint*, p. 9; *Interview with Parent*.

C. Implementation of the 2022 IEP (February through May 2022)

Accessibility of the 2021 and the 2022 IEP

18. Case Manager was Student's special education case manager during the 2021-2022 academic year, and thus, was responsible for ensuring that teachers and service providers were aware of their responsibilities under the 2021 IEP and 2022 IEP. *Exhibit A*, p. 52; *Interview with Case Manager*.
19. Prior to the start of classes for the 2021-2022 academic year, Case Manager and Principal met with all of Student's teachers and service providers to review the 2021 IEP and the plan for the year. *Interviews with Case Manager, Principal, and Geometry Teacher*. Following the meeting, teachers and service providers were given time to "digest" the 2021 IEP, then asked to come back with questions and sign an attestation indicating they both read and understood the 2021 IEP. *Interviews with Case Manager and Geometry Teacher*. All of Student's teachers were also given access to the 2021 IEP through Frontline – School's student information system. *Id.*
20. Following the beginning of the year, Case Manager engaged in weekly "co-planning" sessions with Student's teachers, both to keep track of Student's progress, and to help determine the delivery of accommodations, such as for reduced work. *Interview with Case Manager and Geometry Teacher*. Depending on when Student's teachers were present physically at School for labs and office hours, these "co-planning" sessions sometimes occurred in person, and sometimes virtually via virtual meeting or email. *Interview with Case Manager*. Case Manager also kept track of Student's progress and ensured he received accommodations by monitoring his grades on assignments and assessments through Schoology. *Id.*
21. Following the development of the 2022 IEP in February of 2022, Case Manager informed Student's teachers of the changes that were made to the IEP, and that they could access the 2022 IEP via Frontline. *Interviews with Case Manager and Geometry Teacher*. Case Manager also discussed the changes made to the IEP at weekly "co-planning" sessions and served as a resource for questions. *Id.* Case Manager likewise helped facilitate communication with Parent and served as a point of contact on occasions when Parent expressed concerns. *Id.*

Implementation: Accommodation No. 1 – Reduced Assignments

22. Parent's concern is that District failed to implement the 2022 IEP, from February through May of 2022, by failing to reduce Student's assignments as required by the 2022 IEP. *Interview with Parent*.
23. The 2022 IEP provided that Student would receive "[r]educed assignments without impacting standards as determined by teacher." *Exhibit A*, p. 44. Parent indicated that there were multiple assignments which Student scored poorly on which could have been reduced or excused. *Interview with Parent*. Although Parent does not indicate specifically which assignments should have been reduced or excused during the Spring of 2022, Parent raised

specific concerns with geometry class, and indicated that Student received a final grade of a “D” in the course because of District’s failure to accommodate Student. *Id.*

24. Case Manager explained to the SCO that although she discussed work reductions with Student’s teachers during weekly “co-planning” sessions, she relied on the teachers to determine which assignments could be reduced or excused based on curriculum-based standards. *Interview with Case Manager.* The purpose of the accommodation was to reduce Student’s workload where possible without “watering down” the curriculum—as determined by the teacher referencing course standards—and Student’s teachers were in a better position to determine which assignments could be reduced. *Id.*
25. Geometry Teacher (Student’s general education geometry teacher) explained that, during the Spring of 2022, students in her class generally received two types of assignments – Math XL and Math IXL. *Interview with Geometry Teacher.* Math XL is similar to the type of work students would take home from a textbook in a typical brick and mortar school, whereas Math IXL is an adaptive program targeted to each student’s individualized needs. *Id.* Geometry Teacher reduced Student’s assignments by only requiring him to pick odd or even problems to complete from the Math XL assignments, and by only requiring him to spend half the time as other students on Math IXL (rather than completing a certain number of problems, students were expected to spend a certain amount of time on Math IXL). *Id.*
26. Geometry Teacher further explained that since Math IXL is not tied to course standards, it was “easy” to reduce those assignments, but she disliked reducing Math IXL assignments because Math IXL targeted specific skills which Student needed to improve. *Id.* Math XL is tied to course standards, but students got a “big chunk” of problems working on a particular skill, so she could reduce the quantity of those problems for Student without impacting course standards. *Id.*
27. During the Spring of 2022, Student courses were art, English, geometry, physical science, world geography, and advisory. *Exhibit E*, p. 1. District provided the SCO with a grade report from Schoology showing Student’s grades in each of his courses during the Spring of 2022. *Exhibit F*, pp. 1-23. Upon review of the Schoology report, the SCO finds numerous examples of assignments marked “excused” indicating Student was excused from turning in the assignment during the Spring of 2022. *Id.* at pp. 1, 6-11, 14-17, 21. Although there are also multiple assignments for which Student received a score of a zero, the SCO finds there is evidence that teachers reduced a significant number of Student’s assignments—including assignments in geometry—during the Spring of 2022. *See id.*
28. For these reasons, the SCO accordingly finds that District reduced Student’s assignments as required by the 2022 IEP, from February through May 2022.

Implementation: Accommodation No. 2 – Test Corrections

29. Parent's concern is that District failed to implement the 2022 IEP, from February through May of 2022, by failing to provide Student with the opportunity for test corrections as required by the 2022 IEP. *Interview with Parent*. Parent's concern is that District only provided Student with an opportunity for test corrections on tests, and not on quizzes. *Id.* Parent indicated that, historically, Student has been allowed test corrections on quizzes as well as tests, and District's failure to provide the opportunity for test corrections on quizzes had a negative impact on Student's grades. *Id.*
30. The 2022 IEP provided that Student be given the "[o]ppportunity to complete test corrections when scoring at or below a 79% on initial assessment". *Exhibit A*, p. 44. The 2022 IEP indicated teachers would reach out to Student and offer a time/opportunity to complete corrections with any available resources (such as a study guide and/or corrective feedback), and alternative methods of assessment (such as the opportunity to verbally explain his thinking) could be considered. *Id.* Test corrections must be completed within one week of the teacher reaching out, and Parent should be included on communications (e.g., copied on email). *Id.*
31. During interviews with the SCO, District staff indicated Student was provided with the opportunity for test corrections on tests as required by the 2022 IEP, but that the accommodation did not apply to quizzes. *Interviews with Principal, Case Manager, Geometry Teacher, History Teacher, and Algebra Teacher*.
32. As an initial matter, upon review of the plain language of the 2022 IEP, the SCO finds that, contrary to Parent's position, the test correction accommodation only references "test corrections" and there is nothing in the 2022 IEP that discusses corrections on other smaller assessments, such as quizzes. *See Exhibit A*, pp. 27-52.
33. District staff explained to the SCO that in an asynchronous, online setting, there are few opportunities for teachers to engage in daily check ins with students to see if they understand a concept, so teachers rely on formal assessments like quizzes to see if students understand the material. *Interviews with Principal, Algebra Teacher, History Teacher, Geometry Teacher, and Case Manager*. Because it is an asynchronous program, School does not track attendance by "seat time" like a typical brick and mortar school, so quizzes and assignments are also used to track attendance. *Interview with Principal*. Quizzes are set up so that when a student submits a quiz online, the student receives the answers to the quiz questions immediately upon submission, so there was little teaching value in giving Student the opportunity for test correction on quizzes, as he would not need to engage with the material or spend time figuring out why he missed a question to obtain additional points. *Id.*
34. Upon review of the Schoology report provided to the SCO by District, the SCO finds evidence that Student was given the opportunity for test corrections when he scored less than a 79 percent on tests during the Spring of 2022. *See, e.g., Exhibit F*, pp. 9, 16. For example, unit exams in math contain notations indicating Student was allowed to retake the

tests for additional credit. *See id.* at p. 9. Similarly, a “Week 10 Test” in science contains a notation indicating Student was offered test corrections which led to his grade on a test increasing from a 32.75/45 to a 36.73/45. *See id.* at p. 16.

35. The SCO also finds multiple emails sent during the Spring of 2022 which reference Student’s opportunity for test corrections in various classes. *See, e.g., Exhibit K*, pp. 155, 174, 191, 193, 209, 212, 216, 218, 236, 238, 243, 245, 283-284. Parent was copied on each of these emails. *Id.*
36. Although there is nothing on the Record to show that Student was given the opportunity for test corrections on quizzes, the 2022 IEP’s plain language only references the opportunity for corrections on tests. *See Exhibit A*, p. 44. Moreover, upon consultation with CDE Content Specialist, the SCO finds that since quiz answers become available to students immediately following completion of the quiz, there would be little educational benefit from providing the opportunity for test corrections on quizzes, and District was reasonable in limiting the test correction accommodation to tests, particularly considering the plain language of the accommodation. *Consultation with CDE Content Specialist.*
37. The SCO accordingly finds that Student was provided with the opportunity for test corrections as required by the 2022 IEP, from February through May 2022.

Implementation: Accommodation No. 3 – School to Home Communication

38. Parent’s concern is that District failed to implement the 2022 IEP, from February through May of 2022, by failing to timely inform Parent that Student was falling behind in his classes. *Interview with Parent*. Student received a final grade of “D” in world geography and geometry during the Spring semester of 2022, and an “F” in art³. *Exhibit E*, p. 1. Parent’s concern is that District failed to timely inform her that Student was falling behind in those classes, and as a result, Parent was unaware that Student was struggling in class until it was “too late” to do anything to correct the issue. *Id.*; *Complaint*, pp. 9-16.
39. The 2022 IEP provided for “[t]imely communication between home and school when [Student] is struggling to demonstrate understanding of material/is falling behind in class.” *Exhibit A*, p. 45. The 2022 IEP did not specify what constituted “struggling to demonstrate understanding of material” or “falling behind in class,” and it did not document how District would communicate these issues to Parent. *See id.*
40. District staff indicated that since School is primarily online, email is generally the preferred method of communicating with students and parents. *Interviews with Principal, Case Manager, Geometry Teacher, Algebra Teacher, and History Teacher*. Staff also communicate with students and teachers through Schoology, phone calls, and Google Chat. *Id.* Parent is

³ Upon review of Student’s Schoology grade report, Student’s low grades in art, geometry, and world geography were largely due to a significant number of missing assignments in each class, as well as low scores on quizzes. *See Exhibit F*, pp. 3-9, 19-22.

copied on all communications that are sent to Student, and Parent can access up-to-date information about grades on assignments and assessments at any time through Schoology. *Id.*

41. Upon review of the Record, the SCO finds that during the Spring of 2022, District staff included Parent on multiple emails which expressed concerns that Student was falling behind, failing to turn in assignments, and/or missing labs/sessions with the school psychologist and/or Case Manager. *See, e.g., Exhibit K*, pp. 99, 126, 141, 148, 155, 167, 224, 229, 235, 239, 269, 271, 284-85. For example, on February 8, Student's general education art teacher emailed Student and expressed concern that he failed to turn in an assignment for "Week 5" and that he was failing art. *Id.* at p. 141. On February 14, Student's science teacher emailed Student to express concern that he had not yet turned in any assignments for "Week 6." *Id.* at p. 155. On May 19, 2022, Case Manager indicated via email that Student was missing assignments in geometry, art, and science, and that Student was failing art and advisory. *Id.* at p. 285. Parent was included on these emails. *See id.* at pp. 141, 155.
42. The SCO also finds evidence that Parent was aware that Student was falling behind in emails Parent sent to District staff. *See e.g., id.* at pp. 195, 240. For instance, in March of 2022 Parent indicated in an email that she did not think any of Student's grades "this semester" were above a "D." *Id.* at p. 195. Similarly, in May of 2022, Parent indicated in an email that she had been "perusing" Student's grades on Schoology and was "pretty concerned," asking what "plan is in place to get him into the 70% and above in all courses by end of year." *Id.* at p. 240.
43. Parent expressed concern that District copied her on emails sent to Student to implement the school-home communication accommodation, because Parent "cannot read every email that is a general teacher instruction" sent to Student, and that if an email is directed to Student, Parent will "half-focus on its importance." *Complaint*, p. 12. Parent conceded during interviews that she was able to access Student's grades through Schoology, but that it "takes a lot of [her] energy to make sure that Schoology is accurate, so it is hard to rely on it." *Interview with Parent.*
44. The SCO finds that there is nothing in the plain language of the 2022 IEP which required District to send Parent a direct message to indicate Student was falling behind, or specified when and how such information would be provided to Parent. *See Exhibit A*, pp. pp. 27-52.
45. The SCO also finds the evidence demonstrates that Parent was copied on multiple emails during the Spring 2022 which indicated Student was missing assignments, labs, and sessions with school psychologist/Case Manager and/or that Student falling behind in classes. *See, e.g., Exhibit K*, pp. 99, 126, 141, 148, 155, 167, 224, 229, 235, 239, 269, 271, 284-85. Parent's own emails also indicate that Parent was aware, as of March and May of 2022, that Student was behind in his classes. *Id.* at pp. 195, 240. Throughout that time, Parent also had access to up-to-date information on grades on individual assignments and assessments

through Schoology. *Interviews with Principal, Case Manager, Geometry Teacher, Algebra Teacher, History Teacher, and Parent.* All teachers interviewed by the SCO credibly reported that they updated Schoology regularly, and the information contained on Schoology was up to date. *Interviews with Case Manager, Geometry Teacher, Algebra Teacher, and History Teacher.*

46. For these reasons, the SCO accordingly finds that District provided timely School-home communication when Student was falling behind as required by the 2022 IEP, from February through May 2022.

D. Implementation of the 2022 IEP (August through December 2022)

47. Following summer, Student began attending School as a tenth grader starting on August 18, 2022. *See Exhibit I, p. 2.* When classes began at School, the 2022 IEP remained in effect. *See Exhibit A, pp. 28-52.*

Accessibility of the 2022 IEP

48. During the 2022-2023 academic year, Case Manager remained Student’s special education case manager, and thus, continued to be responsible for ensuring that teachers and service providers were aware of their responsibilities under the 2022 IEP. *Exhibit A, p. 52; Interview with Case Manager.*
49. Prior to the start of classes for the 2022-2023 academic year, both Case Manager and Principal met with each of Student’s teachers and service providers to review the 2022 IEP and discuss the plan for the year. *Interviews with Principal, Case Manager, History Teacher, and Algebra Teacher.* Student’s teachers were given time to review the 2022 IEP and ask questions, and each were required to sign an attestation confirming that they both received 2022 IEP and understood their responsibilities under the document. *Id.* All of Student’s teachers were likewise given access to the 2022 IEP through Frontline. *Id.*
50. As she did during the previous year, Case Manager continued to engage in weekly “co-planning” sessions with each of Student’s teachers, which involved check-ins regarding the 2022 IEP and Student’s progress. *Interviews with Case Manager, History Teacher, and Algebra Teacher.* Case Manager likewise continued to facilitate communication with Parent and monitor Student’s progress and the implementation of accommodations from the 2022 IEP via Schoology. *Interview with Case Manager.*
51. As a result of Parent expressing concerns about Student’s accommodations, such as the work reduction accommodation, District began implementing a shared document designed to track reduced/excused assignments and extended deadlines for Student for each class (“Student’s Plan”). *Exhibit F, pp. 62-68; Exhibit P, pp. 1-2.* Student’s Plan was a table which

contained columns for each of Student's classes during the Fall of 2022, wherein each of Student's teachers inputted information about the work Student was expected to complete each week in each class. See *Exhibit F*, pp. 62-68; *Exhibit P*, pp. 1-2. Student's Plan also contained information about the deadlines for assignments where Student's deadline was extended (extended time on tests and assignments was an accommodation on the 2022 IEP). See *Exhibit F*, pp. 62-68; *Exhibit P*, pp. 1-2; *Exhibit A*, p. 44.

Implementation: Accommodation No. 1 – Reduced Assignments

52. Parent's concern is that District failed to implement the 2022 IEP, from August through December of 2022, by failing to reduce assignments as required by the 2022 IEP. *Interview with Parent*. Because of this failure, Parent indicated Student failed three of his classes during the Fall of 2022 – specifically health, world history, and algebra 2. *Complaint*, p. 10.
53. Parent provided an example of an assignment in world history for which Student received a 10/100 and indicated that the assignment was "profoundly complicated" for Student, and that District did not sufficiently accommodate him to complete it. *Id.* at p. 11; *Interview with Parent*. Parent further indicated that, during the Fall of 2022, District "could have excused multiple small assignments" which were not "essential." *Interview with Parent*.
54. The 2022 IEP provided that Student would receive "[r]educed assignments without impacting standards as determined by teacher." *Exhibit A*, p. 44.
55. District provided the SCO with a grade report from Schoology showing Student's grades in each of his courses during the Fall of 2022. *Exhibit F*, pp. 23-50. Upon review, the SCO finds numerous notations indicating Student was "excused" from assignments during the Fall of 2022. See, e.g., *id.* at pp. 23-24, 27-31, 33-37, 39-41, 43, 45, 49. Upon review of Student's Plan, the SCO also finds there are notations indicating teachers reduced the assignments which Student was expected to complete each week during each of his classes during the Fall of 2022. See *Exhibit F*, pp. 62-65. For instance, during "Week 7" in world history, Student was asked to "[c]omplete 10 slides in lieu of 15 for 07.1"; for "Week 8" in algebra 2, Student was only required to complete "odds only"; and for "Week 7" in health, Student was excused from completing "7.03." *Id.* at p. 62.
56. Algebra Teacher (Student's general education algebra 2 teacher) explained that the primary area where he was able to reduce assignments was during Math XL (one of the same math programs referenced by Geometry Teacher). *Interview with Algebra Teacher*. Algebra Teacher was unable to reduce or excuse Student's quizzes (Student scored poorly on multiple quizzes in algebra 2), because quizzes were short, and each question was designed to test knowledge in a specific content area. *Id.*; see *Exhibit F*, pp. 27-28. Instead, Algebra Teacher reduced Math XL assignments by only requiring Student to complete even or odd problems. *Interview with Algebra Teacher*.

57. The SCO finds evidence to support Algebra Teacher’s account in Student’s Plan. *Exhibit F*, pp. 62-65. For instance, there are notations indicating Student was only required to complete “odds only” for “Week 10.” *Id.* at p. 63.
58. History Teacher (Student’s general education world history teacher) explained that she reduced assignments by shortening the amount of items that Student needed to do for an assignment. *Interview with History Teacher*. History Teacher also reduced assignments by providing Student with research and resources ahead of time so he would not need to spend time developing resources/research for assignments. *Id.* For instance, on an assignment where students were asked to report about five world leaders, Student was only asked to report about one world leader. *Id.*
59. With respect to the assignment that Student scored 10/100, History Teacher reached out to Student early about the assignment and provided him with “crash course” videos about the assignment and did the research for him ahead of time so he would not need to spend additional time on research. *Id.* History Teacher also shortened the assignment for Student, but Student only turned in a partially completed assignment with three or four sentences written. *Id.* When Student received a poor score on the assignment, History Teacher offered Student the opportunity to redo the assignment verbally with History Teacher, but Student elected not to do so. *Id.*
60. The SCO finds evidence that History Teacher reduced Student’s assignments in Student’s Plan. *Exhibit F*, pp. 62-65. For example, during “Week 15”, Student was asked to “[c]omplete 15 instead of 20 Quizlet cards”. *Id.* at p. 64. There is also a notation on the Schoology report for the assignment which Student received a 10/100 wherein History Teacher offered for Student to redo the assignment by recording responses in an audio format, corroborating History Teacher’s account. *Id.* at p. 48.
61. For these reasons, the SCO accordingly finds that District reduced Student’s assignments as required by the 2022 IEP, from August through December 2022.

Implementation – Accommodation No. 2 – Test Corrections

62. Parent’s second concern is that District failed to implement the 2022 IEP, from August through December of 2022, by failing to provide Student with the opportunity for test corrections as required by the 2022 IEP. *Interview with Parent*.
63. As discussed *supra*, the 2022 IEP provided that Student be given the opportunity for test corrections when scoring at or below a 79 percent on an initial assessment. *Exhibit A*, p. 44. Parent again argues that the test correction accommodation applies to quizzes as well as tests, but as discussed *supra*, the 2022 IEP only required that Student be given the opportunity for test corrections on tests. *See Exhibit A*, p. 44.

64. During interviews, Case Manager, Algebra Teacher, and History Teacher all confirmed to the SCO that Student was offered the opportunity to complete test corrections whenever he scored less than 79 percent on the initial assessment. *Interviews with Case Manager, Algebra Teacher, and History Teacher.*
65. Upon review of the Schoology report provided to the SCO by District, the SCO finds the Schoology report contains evidence that Student was given the opportunity for test corrections when he scored less than a 79 percent on tests during the Fall of 2022. *See, e.g., Exhibit F, pp. 25 (showing “corrections credit” for a test in algebra 2).*
66. The SCO also finds that the email Record contains evidence that test corrections were offered to Student during the Fall of 2022. *See e.g., id.* at pp. 337 (world history), 360, 416, 424 (algebra 2), 429, 440, 441, 497 (algebra 2), 550 (world history). Student’s Plan likewise contains evidence that test corrections were offered to Student. *See e.g., Exhibit F, p. 63 (test corrections referenced in notes for world history).*
67. Relatedly, Parent also raised a concern that, at times during the Fall of 2022, Student was only given the opportunity to retake tests instead of test corrections. *Interview with Parent.* For example, in world history during October of 2022, History Teacher emailed Student (and copied Parent) to offer Student the opportunity to “retake” an exam. *Exhibit K, p. 337.*
68. District staff acknowledged that there were occasions during the Fall of 2022 when Student was offered the option of retaking a test instead of test corrections but explained that this was only on occasions when Student either left questions blank or did not attempt the initial assessment. *Interviews with Principal, Case Manager, Algebra Teacher, and History Teacher.* On those occasions, there was no answer for Student to “correct”, and there was concern that Student had become reliant on test corrections rather than attempting the tests on his own. *Id.* Although teachers encouraged Student to come to labs to perform test corrections in person with the teacher, Student rarely attended labs, and typically completed test corrections on his own. *Id.*
69. The SCO finds that in order for the “test corrections” accommodation to apply, Student must first attempt to answer the test questions on his own. *Consultation with CDE Content Specialist.* Allowing Student to perform “test corrections” on an assessment which he did not attempt, particularly if the “test corrections” are performed by Student alone with an answer key, serves little educational value, and may inhibit Student’s learning by creating an incentive to avoid completing the initial assessment. *Id.*
70. For these reasons, the SCO finds that Student was offered the opportunity for test corrections as was required by the 2022 IEP, from August through December 2022.

Implementation: Accommodation No. 3 – School to Home Communication

71. Parent’s concern is that District failed to implement the 2022 IEP, from August through December of 2022, by failing to inform Parent that Student was falling behind in his classes. *Interview with Parent*. Student failed (and later took grades of “incomplete” in) health, algebra 2, and world history during the Fall of 2022.⁴ *Id.*; *Exhibit E*, p. 2.
72. The 2022 IEP provided for “[t]imely communication between home and school when [Student] is struggling to demonstrate understanding of material/is falling behind in class.” *Exhibit A*, p. 45.
73. The SCO finds that during the Fall of 2022, District staff included Parent on multiple emails which expressed concerns that Student was falling behind, failing to turn in assignments, and/or missing labs and/or sessions with the school psychologist and/or Case Manager. *See, e.g., Exhibit K*, pp. 325, 332-33, 342, 344, 383-84, 401-02; *see* 460; *see* 527. For example, on September 6, Student’s general education health teacher emailed Student (and copied Parent) to express concerns that he failed to turn in “the majority” of work for “[W]eek 3” of health, leaving Student with a 51 percent in the class. *Id.* at p. 325. On October 6, Case Manager emailed Parent directly and indicated Student was missing assignments for “[W]eek 7” and that his grades were “low.” *Id.* at pp. 332-33. On December 2, the school psychologist emailed Parent directly and indicated she had not seen Student “in several weeks” and that his attendance had been “minimal and inconsistent.” *Id.* at pp. 401-02.
74. The SCO also finds evidence that Parent was aware that Student was falling behind during the Fall of 2022 in emails sent by Parent to District staff. *See e.g., id.* at pp. 326, 329, 330, 332, 355, 364, 399, 418, 431, 434, 440, 559. For example, on September 21, 2022, Parent emailed Case Manager and asked if “any of [Student’s] low grades are due to some of his accommodations not being facilitated.” *Id.* at p. 329. In an October 7, 2022 email, Parent indicated that Student’s grades were “miserable”. *Id.* at p. 332. On November 17, 2022, Parent emailed Case Manager and indicated that she had checked Schoology and saw that Student received two zeros on assignments in English. *Id.* at p. 355. On December 2, 2022, Parent emailed the school psychologist and indicated Student was “failing three classes.” *Id.* at p. 399.
75. The SCO finds further there is nothing in the plain language of the 2022 IEP which required District to send Parent a direct message to indicate Student was falling behind, or specified when and how such information would be provided to Parent. *See Exhibit A*, pp. 27-52.
76. Indeed, Parent was copied on multiple emails throughout the Fall of 2022 which indicated Student was missing assignments, labs, and sessions with school psychologist/Case Manager; and that Student falling behind in classes. *See, e.g., Exhibit K*, pp. 325, 332-33, 342, 344, 383-84, 401-02 460, 527. Parent’s own emails likewise indicate that Parent was aware throughout the Fall of 2022 that Student was falling behind in his classes. *Id.* at pp.

⁴ At the end of the semester, Student was given the option of taking an “incomplete” instead of failing health, algebra 2, and world history, and continuing to work on the material during the Spring of 2023 to increase his grades in those classes. *Interviews with Principal and Parent*.

326, 329, 330, 332, 355, 364, 399, 418, 431, 434, 440, 559. Throughout this time, Parent also had access to up-to-date information on Student’s grades on individual assignments and assessments through Schoology. *Interviews with Principal, Case Manager, Geometry Teacher, Algebra Teacher, History Teacher, and Parent.*

77. The SCO accordingly finds that District provided timely School-home communication when Student was falling behind as required by the 2022 IEP, from August through December 2022.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District properly implemented Student’s IEP, from February through May 2022, and again from August through December 2022, consistent with 34 C.F.R. § 300.323.

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). 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. Implementation of the 2022 IEP (February through May 2022)

Parent’s Concerns

The 2022 IEP was in effect starting in February of 2022. *See* (FF # 5). Parent’s concern is that District failed to implement the 2022 IEP from February through May of 2022, by failing to provide Student with accommodations as required by the 2022 IEP. (FF # 17).

Accessibility to Student’s Teachers

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Case Manager was Student’s special education case manager, and thus, was responsible for ensuring staff were aware of their responsibilities under the 2021 IEP and 2022 IEP. (FF # 18).

Prior to the start of classes at School for the 2021-2022 academic year, Case Manager and Principal met with all of Student’s teachers and service providers to review the 2021 IEP and discuss the plan for the year. (FF # 19). Student’s teachers were given a copy of the 2021 IEP, and asked to sign an attestation indicating they read and understood the document. (*Id.*). Teachers were also given access to the 2021 IEP through Frontline. (*Id.*).

Following the beginning of the year, Case Manager engaged in regular weekly “co-planning” sessions with each of Student’s teachers. (FF # 20). Case Manager was available as a resource to answer questions about the 2021 IEP, and Case Manager monitored Student’s progress and the implementation of accommodations (such as work reduction) through Schoology. (*Id.*).

In February 2022, following the development of the 2022 IEP, Case Manager provided the 2022 IEP to Student’s teachers, and discussed the changes with teachers during weekly “co-planning” sessions. (FF # 21). Case Manager also acted as a point of contact for Parent and facilitated communication between teachers and Parent on occasions when Parent expressed concerns. (*Id.*).

For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the Spring of 2022 were informed of their responsibilities under the 2021 IEP and the 2022 IEP, consistent with 34 C.F.R. § 300.323(d).

Accommodation No. 1 – Work Reduction

The 2022 IEP contained an accommodation which provided for reduced assignments without impacting standards, as determined by teacher. (FF #s 13, 23).

Although Parent indicates there were many small assignments during the Spring of 2022 which were not essential and could have been reduced or excused, the accommodation explicitly left it to Student's teachers to determine which assignments could be reduced without impacting standards. (FF #s 13, 23-24). While Student received zero scores for multiple assignments, there is evidence that Student's teachers reduced or excused a significant number of assignments during the Spring of 2022, including in geometry class. (FF #s 25-27).

The SCO accordingly finds and concludes that District reduced Student's assignments, as required by the 2022 IEP, from February through May 2022, consistent with 34 C.F.R. § 300.323.

Accommodation No. 2 – Test Corrections

The 2022 IEP contained an accommodation which provided that Student be offered the opportunity to perform test corrections when scoring at or below a 79 percent on an initial assessment. (FF #s 13, 30).

Although Parent indicates that the test correction accommodation should apply to quizzes as well as tests, the plain language of the 2022 IEP only discusses the opportunity for "test corrections" and does not extend the accommodation to quizzes. (FF # 32). During interviews with the SCO, District staff also provided a reasonable justification for deciding not to extend the accommodation to quizzes at Parent's request. (FF #s 33, 36).

District staff reported that Student was given the opportunity for test corrections whenever he scored at or less than 79 percent on an initial assessment. (FF # 31). Student's Schoology grade report corroborates this, and contains evidence that Student was given the opportunity for test corrections when scoring less than 79 percent on tests during the Spring of 2022. (FF # 34). Similarly, there are multiple emails sent during the Spring of 2022 which reference Student's opportunity for test corrections. (FF # 35).

For these reasons, the SCO accordingly finds and concludes that District provided Student with the opportunity for test corrections as required by the 2022 IEP, from February through May of 2022, consistent with 34 C.F.R. § 300.323.

Accommodation No. 3 – School to Home Communication

The 2022 IEP contained an accommodation which provided for timely communication from School to home when Student was either struggling to demonstrate understanding of the material or falling behind in class. (FF #s 13, 39).

Although Parent expresses concerns that she was copied on messages to Student to facilitate this accommodation instead of staff sending direct messages to Parent, there is nothing in the 2022 IEP which specified how District would inform Parent that Student was falling behind. (FFs # 44-45).

District staff sent multiple emails throughout the Spring of 2022 to express concerns that Student was missing assignments, falling behind in classes, and missing labs and sessions with Case Manager/the school psychologist. (FF # 41). Parent was copied on all these emails. (*Id.*). Parent's own emails also demonstrate that Parent was aware, as of March 2022, and again in May 2022, that Student was falling behind in classes. (FF # 42).

Moreover, Parent had access to Schoology, and thus up-to-date information about Student's grades on assignments, tests, and quizzes. (FF #s 43). Although Parent expressed concern about the reliability of the information on Schoology, every teacher interviewed indicated that Schoology is updated regularly, and the grade information contained on Schoology was up to date. (FF # 45).

For these reasons, the SCO finds and concludes that District provided Parent with timely communication when Student was struggling to understand the material or falling behind in class as required by the 2022 IEP, from February through May 2022, consistent with 34 C.F.R. § 300.323.

B. Implementation of the 2022 IEP (August through December 2022)

Parent's Concerns

The 2022 IEP remained in effect when classes started at School in August 2022 following summer. (FF # 47). Parent's concern is that District failed to implement the 2022 IEP from August through December of 2022, by failing to provide Student with accommodations as required by the 2022 IEP. (FF #17).

Accessibility to Student's Teachers

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Case Manager remained Student's special education case manager, and thus, continued to be responsible for ensuring staff were aware of their responsibilities under the 2022 IEP. (FF # 48).

Prior to the start of classes at School for the 2022-2023 academic year, Case Manager and Principal met with all of Student's teachers and service providers to review the 2022 IEP and discuss the plan for the year. (FF # 49). Student's teachers were given a copy of the 2022 IEP, and asked to sign an attestation indicating they read and understood the document. (*Id.*). Teachers were also given access to the 2022 IEP through Frontline. (*Id.*).

Following the beginning of the year, Case Manager continued to engage in regular weekly “co-planning” sessions with each of Student’s teachers. (FF # 50). Case Manager also continued to be available as a resource to answer questions about the 2022 IEP, and Case Manager monitored Student’s progress and the implementation of accommodations through Schoology. (*Id.*).

As a result of Parent expressing concerns about Student’s accommodations, District implemented Student’s Plan to streamline services and help keep track of his work reduction and extended deadline accommodations. (FF # 51). This document was used by all of Student’s teachers, and contained detailed information about his work reduction and extended deadline accommodations for every week of the Fall 2022 semester. (*Id.*). Case Manager also continued to act as a point of contact for Parent and facilitated communication between teachers and Parent on occasions when Parent expressed concerns. (FF # 50).

For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the Fall of 2022 were informed of their responsibilities under the 2022 IEP, consistent with 34 C.F.R. § 300.323(d).

Accommodation No. 1 – Work Reduction

The 2022 IEP contained an accommodation which provided for reduced assignments without impacting standards, as determined by teacher. (FF #s 13, 54).

Although Parent indicates there were many small assignments during the Fall of 2022 which were not essential and could have been reduced or excused, the accommodation explicitly left it to Student’s teachers to determine which assignments could be reduced without impacting standards. (FF # 13, 53). While Student received zero scores for multiple assignments, there is evidence that Student’s teachers reduced or excused a significant number of assignments during the Fall of 2022, including assignments in health, algebra 2, and world history. (FF #s 55-60). These reductions appear in both the Schoology grade report for Fall 2022, and in the notations contained in Student’s Plan. (FF #s 55, 57, 60).

The SCO accordingly finds and concludes that District reduced Student’s assignments, as required by the 2022 IEP, from August through December 2022, consistent with 34 C.F.R. § 300.323.

Accommodation No. 2 – Test Corrections

The 2022 IEP contained an accommodation which provided that Student be offered the opportunity to perform test corrections when scoring at or below a 79 percent on an initial assessment. (FF #s 13, 63). Again, by the plain language of the 2022 IEP, this accommodation only applies to tests, and not smaller assessment such as quizzes. (FF # 63).

Although Parent expressed concern that Student was, at times, only offered the opportunity to retake a test instead of perform test corrections, District staff explained that this was only on occasions where Student left questions blank or failed to attempt the initial assessment. (FF #s 67-68). The SCO finds, in consultation with CDE Content Specialist, that the test correction accommodation is inapplicable when Student did not first attempt the question/test, and District was reasonable in its interpretation of the accommodation. (FF # 69).

During interviews, District staff indicated Student has consistently been offered the opportunity for test corrections when scoring at or less than 79 percent on an initial assessment. (FF # 64). Student's Schoology grade report contains evidence that Student was given the opportunity for test corrections when scoring less than 79 percent on tests during the Fall of 2022 (on tests which Student attempted). (FF # 65). Similarly, there were multiple emails sent during the Fall of 2022 which reference Student's opportunity for test corrections. (FF # 66).

For these reasons, the SCO accordingly finds and concludes that District provided Student with the opportunity for test corrections as required by the 2022 IEP, from August through December 2022, consistent with 34 C.F.R. § 300.323.

Accommodation No. 3 – School to Home Communication

The 2022 IEP contained an accommodation which provided for timely communication from School to home when Student was either struggling to demonstrate understanding of the material or falling behind in class. (FF #s 13, 72).

There is nothing in the 2022 IEP which required District to send Parent a direct message to inform her that Student was falling behind, or anything which specified how Parent would be informed that Student was struggling. (FF # 39).

District staff sent multiple emails throughout the Fall of 2022 to express concerns that Student was missing assignments, falling behind in classes, and missing labs and sessions with Case Manager/the school psychologist. (FF # 73). Parent was copied on all these emails. (*Id.*). Parent's own emails also demonstrate that Parent was aware, as of September 2022, October 2022, November 2022, and December 2022, that Student was falling behind in classes. (FF # 74). Moreover, Parent had access to Schoology, and thus to up-to-date information about Student's grades on assignments, tests, and quizzes. (FF # 76).

For these reasons, the SCO finds and concludes that District provided Parent with timely communication when Student was struggling to understand the material or falling behind in class as required by the 2022 IEP, from August through December 2022, consistent with 34 C.F.R. § 300.323.

REMEDIES

The SCO concludes that District did not violate the requirements of IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

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 26th day of March, 2023.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-28

Response, pages 1-7

- Exhibit A: IEP(s)
- Exhibit B: PWN (comp ed)
- Exhibit C: NOM(s)
- Exhibit D: none
- Exhibit E: Grades and Progress Monitoring
- Exhibit F: Service Logs
- Exhibit G: Schedule and Attendance
- Exhibit H: Evaluation Report
- Exhibit I: Academic Calendar
- Exhibit J: Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L/M: List of Relevant Staff
- Exhibit N: Verification of Delivery to Parents
- Exhibit O: Alternate World History Plan
- Exhibit P: Updated Student Plan

Reply, pages 1-7

- Exhibit 1: IEE Report
- Exhibit 2: 2020 Correspondence (combined)
- Exhibit 3: Email w/Recording Attachment (PNG)
- Exhibit 4: Meeting Recordings (combined)
- Exhibit 5: 20/21 Report Card
- Exhibit 6: 2021 Correspondence (combined)
- Exhibit 7: January 2021 Letter
- Exhibit 8: Settlement Agreement
- Exhibit 9: 10 Day Notice
- Exhibit 10: Release of Information
- Exhibit 11: 2022 Correspondence (combined)
- Exhibit 12: Parent Comments on Draft IEP (combined)
- Exhibit 13: Student Math Work (combined)
- Exhibit 14: 2023 Correspondence (combined)
- Exhibit 15: Schoology Report
- Exhibit 16: Student's Writing
- Exhibit 17: Evaluation Report
- Exhibit 18: Student Schedule
- Exhibit 19: 05.6 Quiz

- Exhibit 20: Grade Report
- Exhibit 21: School Promotional Materials
- Exhibit 22: Photo of Parent

Telephone Interviews

- Case Manager: February 28, 2023
- Director of Special Education: March 3, 2023
- Algebra Teacher: February 28, 2023
- Geometry Teacher: February 28, 2023
- History Teacher: February 28, 2023
- Parent: March 8, 2023
- Principal: February 28, 2023